

EXHIBIT E

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 - - -
4 JOHN DOE, :
5 Plaintiff, :
6 vs. :
7 ST. JOSEPH'S UNIVERSITY :
8 and :
9 JANE ROE, :
10 Defendants. : NO. 18-2044

11 - - -
12 MONDAY, JULY 23, 2018
13 - - -

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15 - - -
16 Oral deposition of ELIZABETH A.
17 MALLOY, ESQ., taken at the law offices of
18 Montgomery McCracken Walker & Rhoads, LLP,
19 1735 Market Street, 21st Floor, Philadelphia,
20 Pennsylvania, commencing at 10:11 a.m., before
21 Kimberly A. Wornczyk, a Registered
22 Professional Reporter, New Jersey Certified
23 Court Reporter (Certificate No. 30X100223500),
24 and Notary Public in and for the Commonwealth
 of Pennsylvania.

25 - - -
26 VERITEXT LEGAL SOLUTIONS
27 MID-ATLANTIC REGION
28 1801 Market Street - Suite 1800
29 Philadelphia, Pennsylvania 19103

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ALSO PRESENT:

Marianne Schimelfenig, Esquire

(St. Joseph's University)

Thomas G. Wilkinson, Jr., Esquire

(Cozen O'Connor)

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<p>Page 6</p> <p>1 DEPOSITION SUPPORT INDEX</p> <p>2 - - -</p> <p>3 INSTRUCTION NOT TO ANSWER:</p> <p>4 Page Line</p> <p>5 277 4</p> <p>6 307 9</p> <p>7</p> <p>8 REQUEST FOR PRODUCTION OF DOCUMENTS:</p> <p>9 Page Line Description</p> <p>10 62 12 Investigation records</p> <p>11</p> <p>12</p> <p>13 STIPULATIONS:</p> <p>14 Page Line</p> <p>15 7 1</p> <p>16</p> <p>17 QUESTIONS MARKED:</p> <p>18 Page Line</p> <p>19 (None)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 8</p> <p>1 agreement of counsel that all of that is to be</p> <p>2 kept confidential and the Court has approved</p> <p>3 that agreement by issuing an order to that</p> <p>4 effect. So I need to have the deposition</p> <p>5 reflect that it should be confidential on it.</p> <p>6 I should also state that I'll be referring to</p> <p>7 the plaintiff, who was a respondent in the</p> <p>8 case, as John Doe and the individual</p> <p>9 defendant, the female who was the complainant</p> <p>10 in the case, as Jane Roe. Just for purposes,</p> <p>11 you don't have to say who they are, but do we</p> <p>12 have an understanding that you know the real</p> <p>13 identity of those individuals?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. And do you prefer me to try to</p> <p>17 use John and Jane to the best of my ability?</p> <p>18 Q. What we have been doing is</p> <p>19 this, if you slip and call them by name, we'll</p> <p>20 just have the transcript changed to reflect</p> <p>21 Jane Roe and John Doe. So don't worry about</p> <p>22 it. We'll proceed accordingly.</p> <p>23 I know you're a member of the</p> <p>24 bar, but have you given deposition before?</p>
<p>Page 7</p> <p>1 (It is agreed by and among</p> <p>2 counsel for the respective parties</p> <p>3 that the sealing, filing are hereby</p> <p>4 waived, and that all objections,</p> <p>5 except as to the form of the question,</p> <p>6 be reserved until the time of trial.)</p> <p>7 - - -</p> <p>8 ELIZABETH A. MALLOY, ESQUIRE,</p> <p>9 having been duly sworn, was examined</p> <p>10 and testified under oath as follows:</p> <p>11 - - -</p> <p>12 EXAMINATION</p> <p>13 - - -</p> <p>14 BY MR. SCHWABENLAND:</p> <p>15 Q. Could you please state your</p> <p>16 full name for the record?</p> <p>17 A. Elizabeth Ann Malloy.</p> <p>18 Q. Ms. Malloy, we met before. We</p> <p>19 met downstairs in the lobby today, but let me</p> <p>20 state for the record, I am Ed Schwabenland. I</p> <p>21 represent the plaintiff in this case. I</p> <p>22 should state that this deposition, like all</p> <p>23 the other depositions, as well as the exhibits</p> <p>24 that are being used are subject to an</p>	<p>Page 9</p> <p>1 A. I have.</p> <p>2 Q. Have you ever given depositions</p> <p>3 with regard to anything to do with Title IX or</p> <p>4 your handling of Title IX or investigations</p> <p>5 into student complaints?</p> <p>6 A. I have not.</p> <p>7 Q. Okay. I know you know these</p> <p>8 ground rules, but let me just state for the</p> <p>9 record if I may. If I ask a question that</p> <p>10 doesn't make sense, which I have that habit of</p> <p>11 doing sometimes, let me know and I'll rephrase</p> <p>12 the question. Fair enough?</p> <p>13 A. Yes.</p> <p>14 Q. I only want you to answer the</p> <p>15 question if you assumed you understood it and</p> <p>16 if you answer the question I assume that</p> <p>17 you're answering truthfully to the best of</p> <p>18 your ability; is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. Also, I am going to ask you to</p> <p>21 do the very thing you've been doing, waiting</p> <p>22 for me to get done making a statement, asking</p> <p>23 a question, and you respond verbally to that.</p> <p>24 So if one person talks at a time and there's</p>

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<p style="text-align: right;">Page 10</p> <p>1 verbal responses it makes this young lady's 2 life a lot easier. Okay? 3 A. I will do my best. 4 Q. Finally, I have a lot of ground 5 to cover. I understand there's no time 6 restrictions today. So we are going to get 7 done today, if that's okay with you? 8 A. Yes. 9 Q. Okay. But if you want to take 10 a break, feel free to exercise any of those 11 options. Okay? 12 A. Yes. 13 Q. One last thing, and I'm not 14 sure -- 15 MR. SCHWABENLAND: John, maybe 16 you can help me. Do you represent Ms. 17 Malloy? 18 MR. MYERS: I do. 19 MR. SCHWABENLAND: Okay. So I 20 don't have to give instructions that 21 she's a witness and she has certain 22 rights? 23 MR. MYERS: That's correct. 24 And also, Tom Wilkinson from Cozen is</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Bachelor of arts in 2 international affairs. 3 Q. I know you graduated with some 4 type of honors. What did you graduate with? 5 A. I really don't recall. It was 6 some sort of Cum Laude and Phi Beta Kappa. 7 Q. Fair enough. What did you do 8 after graduation from Catholic University? 9 A. I worked at the State 10 Department in Washington, D.C. until my 11 parents died and then I came back to 12 Philadelphia to raise my brother and sisters. 13 Q. And, I'm sorry, to raise 14 your -- 15 A. Brother and sisters. Brother, 16 singular, and sisters. 17 Q. When did you come back to the 18 Philadelphia area? 19 A. The fall of -- 20 Q. I know you graduated from 21 Villanova in 1986. 22 A. Right. 23 Q. So when did you start 24 Villanova?</p>
<p style="text-align: right;">Page 11</p> <p>1 here as her law firm's counsel. 2 MR. SCHWABENLAND: Okay. 3 Thanks, Mr. Wilkinson. 4 MR. MYERS: It's a bit of a 5 joint representation. 6 MR. SCHWABENLAND: Very good. 7 BY MR. SCHWABENLAND: 8 Q. Let me ask you about your 9 background, if I may. Where did you grow up? 10 A. Drexel Hill, Pennsylvania. 11 Q. And where did you go to high 12 school? 13 A. Archbishop Prendergast. 14 Q. When did you graduate? 15 A. 1977. 16 Q. I know you did your 17 undergraduate work at American University -- 18 A. Catholic University. 19 Q. Catholic University. I'm 20 sorry. And that's in Washington, D.C.? 21 A. Yes. 22 Q. When did you graduate? 23 A. 1981. 24 Q. With what degree?</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Three years before. I finished 2 law school in three years. 3 Q. Okay. 4 A. My father died in September of 5 '81, my mother died in November of '82, so in 6 that time frame, probably closer to the summer 7 of '82. 8 Q. While you went to Villanova did 9 you work at all? 10 A. No. 11 Q. So you were a full-time student 12 in law school? 13 A. Yes. 14 Q. And I know you graduated with 15 some honors from law school in 1986. Do you 16 know what it was? I have it written down, Cum 17 Laude. 18 A. That sounds correct. I don't 19 have a recollection. 20 Q. You have a resumé on the 21 website, I would imagine? 22 A. A bio. 23 Q. A bio. Okay. While you went 24 to law school did you do anything to intern</p>

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<p style="text-align: right;">Page 14</p> <p>1 anyplace for public defender's office, 2 prosecutor's office, anything like that? 3 A. No. May I correct a previous 4 answer? 5 Q. Sure. 6 A. I believe you asked if I worked 7 during law school. When classes were in 8 session I went to school full-time and took 9 care of my family. I did have summer jobs. 10 Q. I didn't ask you this: Are you 11 married or single? 12 A. I am single. 13 Q. And I don't want to know your 14 address, but what area do you live in? 15 A. Montgomery County. 16 Q. Okay. I forgot to ask you 17 about how many siblings you had. 18 A. I have three sisters and a 19 brother. 20 Q. And do any of them reside with 21 you now? 22 A. Yes. 23 Q. And who resides with you? You 24 don't have to name them.</p>	<p style="text-align: right;">Page 16</p> <p>1 sure you were exposed to a number of things, 2 but did you work in any specific department? 3 A. No. 4 Q. Okay. And so what type of 5 things did you handle? 6 A. Research memos on a number of 7 miscellaneous issues. 8 Q. Fair enough. Did you do any 9 research or memos on sexual assault, sexual 10 harassment, or Title IX violations? 11 A. I don't believe so. 12 Q. Okay. And after graduation 13 from law school until 1986 where did you go? 14 A. I was an associate at Morgan 15 Lewis. 16 Q. How long did you stay at Morgan 17 Lewis? 18 A. Until January of 1991. 19 Q. And so did you start there, 20 what, in 1986, after you studied for the bar? 21 A. Yes, probably Labor Day 1986. 22 Q. And while you were at Morgan 23 Lewis & Bockius what did you do there? 24 A. I was an associate in the labor</p>
<p style="text-align: right;">Page 15</p> <p>1 A. My younger sister and her 2 family. 3 Q. During the summer when you were 4 at Villanova Law School you said you worked. 5 What type of work? Was it legal related or 6 other than that? 7 A. It was legal. 8 Q. Okay. And what did you do? 9 A. The first summer, between my 10 first and second year, I believe the employer 11 was the American Law Institute. We wrote the 12 little blurbs for the restatements. My second 13 summer I was a summer associate at Morgan 14 Lewis & Bockius. 15 Q. And when you said you wrote the 16 little blurb for the restatement, I take it 17 it's several sections that you worked on? 18 A. They gave us cases to read and 19 we summarized them. It probably was numerous 20 sections. 21 Q. Restatement of what? 22 A. I have no idea. 23 Q. Fair enough. Morgan Lewis & 24 Bockius, when you did a summer intern I am</p>	<p style="text-align: right;">Page 17</p> <p>1 and employment section. 2 Q. Did you represent the employer, 3 the employee, or both? 4 A. The employer. 5 Q. While you were at Morgan Lewis 6 & Bockius did you do any work on sexual 7 misconduct in the higher education field or 8 Title IX violations? 9 A. I do not believe so. 10 Q. Okay. While you were with 11 Morgan Lewis & Bockius did you try any cases? 12 A. I co-chaired one trial. 13 Q. And the nature of that trial, 14 was that an employment issue? 15 A. It was a restrictive covenant. 16 Q. And I take it the employer was 17 seeking -- you represented the employer then? 18 A. Yes. 19 Q. And I take it the employer was 20 seeking to enforce a restricted covenant? 21 A. I think it was the opposite. 22 The employer, our client, had hired somebody 23 and wanted to find the restrictive covenant 24 not valid, is my best recollection.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. That's fine. How did it turn 2 out for you? 3 A. We won. 4 Q. Any other trials that you can 5 recall? 6 A. From Morgan Lewis? 7 Q. Yes. 8 A. Not that I recall. 9 Q. Fair enough. So you left in 10 around January 1991, I take it to go someplace 11 else? 12 A. Yes. I went to Klett Rooney 13 Lieber & Schorling in Pittsburgh. 14 Q. Could you stay that again? 15 A. The firm had change names a 16 couple of times, but I believe at that point 17 it was Klett Rooney Lieber & Schorling. 18 Q. And that's in Pittsburgh? 19 A. Yes. 20 Q. Okay. And how long did you 21 stay there? 22 A. Some point in 2001, I believe 23 the summer of 2001. 24 Q. All right. So for</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I don't believe so. 2 Q. Okay. Give me a general 3 overview of what you mean by labor and 4 employment issues that you were focusing on? 5 A. So the firms I was at had broad 6 labor and employment practices. So we would 7 represent employers in collective bargaining 8 negotiations, labor arbitrations, employment 9 matters between agencies and court, general 10 labor and employment counseling, OSHA, things 11 like that, issues that employers would have. 12 Q. Did you always represent the 13 employer? 14 A. Always. 15 Q. While you were in that section 16 did you handle any cases involving claims of 17 sexual misconduct in the employment realm? 18 A. When I was at Klett? 19 Q. Yes. 20 A. I don't believe so. 21 Q. Okay. Did you try any cases 22 while you were at Klett? 23 A. Yes. 24 Q. And can you tell me the nature</p>
<p style="text-align: right;">Page 19</p> <p>1 approximately ten years or a little bit more? 2 A. Yes. Wait. Let me correct 3 that. 4 Q. I am not going to hold you to 5 the exact time. 6 A. Klett opened a Philadelphia 7 office and I moved from Pittsburgh to 8 Philadelphia. I believe I was in Pittsburgh 9 four or five years. That's my best 10 recollection. 11 Q. And you continued with Klett in 12 the Philadelphia office, right? 13 A. Yes. 14 Q. Until sometime in 2001? 15 A. No, that's incorrect. 2006. 16 Q. 2006. Okay. While with Klett, 17 whether in Pittsburgh or here, were you 18 assigned to a specific department or what? 19 A. Labor and employment. 20 Q. While with Klett up until 2006 21 did you handle any matters on behalf of 22 universities or colleges concerning claims of 23 sexual misconduct by students or Title IX 24 violations?</p>	<p style="text-align: right;">Page 21</p> <p>1 of the cases that you tried? I take it it was 2 always labor and employment? 3 A. Yes. I am not going to 4 remember all the details. I think there were 5 age discrimination cases, gender 6 discrimination cases. 7 Q. Can you approximate for me how 8 many trials you actually tried while at Klett 9 or would that be difficult for you to do? 10 A. It would be difficult for me to 11 do. 12 Q. Okay. You were with Klett for 13 approximately 15 years, if my math is correct? 14 A. Yes. 15 Q. And so would you at least have 16 tried a case once every year or that would 17 vary also? 18 A. It would vary. 19 Q. Of the cases that you tried 20 that you can remember, did you ever try any 21 cases involving claims of sexual misconduct 22 brought by anybody? 23 A. No. 24 Q. You left Klett in 2006 to go</p>

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<p style="text-align: right;">Page 22</p> <p>1 where?</p> <p>2 A. Klett merged with Buchanan</p> <p>3 Ingersoll and it became Buchanan Ingersoll &</p> <p>4 Rooney.</p> <p>5 Q. And so you continued on, then,</p> <p>6 with Buchanan Ingersoll?</p> <p>7 A. That's correct.</p> <p>8 Q. In the labor and employment</p> <p>9 department?</p> <p>10 A. Yes.</p> <p>11 Q. And how long did you stay with</p> <p>12 Buchanan Ingersoll?</p> <p>13 A. Until May of 2017.</p> <p>14 Q. And then you joined your</p> <p>15 present firm?</p> <p>16 A. That's correct.</p> <p>17 Q. And your present firm for the</p> <p>18 record is?</p> <p>19 A. Cozen O'Connor.</p> <p>20 Q. While with Buchanan</p> <p>21 Ingersoll -- I may have asked you this -- did</p> <p>22 you continue in the labor and employment</p> <p>23 section?</p> <p>24 A. Yes, I did.</p>	<p style="text-align: right;">Page 24</p> <p>1 don't have a list of names here -- but would</p> <p>2 any of those cases have entailed claims of</p> <p>3 sexual misconduct brought by an employee</p> <p>4 against somebody else of the employer or the</p> <p>5 employer itself?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Did you handle while with</p> <p>8 Buchanan Ingersoll any Title IX violations? I</p> <p>9 will leave it one at a time. Claims of Title</p> <p>10 IX violation?</p> <p>11 A. That went to trial?</p> <p>12 Q. Well, no, just claims, period.</p> <p>13 A. While I was at Buchanan I was</p> <p>14 doing Title IX investigations for St. Joe's.</p> <p>15 Q. When did you start to do Title</p> <p>16 IX investigation?</p> <p>17 A. I do not recall. My estimate</p> <p>18 would be six or seven years ago.</p> <p>19 Q. Okay. Bear with me one second,</p> <p>20 if you would. When we take a break I am going</p> <p>21 to ask that we make copies of this, but for</p> <p>22 purposes of going through your credentials</p> <p>23 here I will -- when we do make copies of this</p> <p>24 we are going to mark this as Exhibit-A.</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. By this time were you a partner</p> <p>2 then?</p> <p>3 A. I became a shareholder while I</p> <p>4 was at Klett and then that continued when we</p> <p>5 merged with Buchanan.</p> <p>6 Q. Did you oversee the labor and</p> <p>7 employment section? By that I mean, were you</p> <p>8 the head of that section or were you one of</p> <p>9 the attorneys in that section that was</p> <p>10 overseen by somebody else?</p> <p>11 A. I was never a chair on the</p> <p>12 section.</p> <p>13 Q. Okay. While with Buchanan</p> <p>14 Ingersoll did you -- I asked you this for</p> <p>15 Klett -- but did you try cases?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And would that again be</p> <p>18 cases involving labor and employment issues?</p> <p>19 A. Yes.</p> <p>20 Q. And would that always be on</p> <p>21 behalf of the employer?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Would any of those cases</p> <p>24 that you can remember -- I understand you</p>	<p style="text-align: right;">Page 25</p> <p>1 MR. MYERS: Why don't you just</p> <p>2 mark that and we'll make copies with</p> <p>3 the sticker on it.</p> <p>4 -- --</p> <p>5 (Whereupon, Exhibit Malloy-1</p> <p>6 was marked for purposes of</p> <p>7 identification.)</p> <p>8 -- --</p> <p>9 MR. SCHWABENLAND: It's</p> <p>10 Malloy-1.</p> <p>11 BY MR. SCHWABENLAND:</p> <p>12 Q. Ms. Malloy, while you're</p> <p>13 looking that over, if I can state, that was</p> <p>14 produced by the university and at the bottom</p> <p>15 there are Bates stamp numbers and if you just</p> <p>16 read that off on the bottom right.</p> <p>17 MR. MYERS: 1361.</p> <p>18 MR. SCHWABENLAND: And then the</p> <p>19 second one is 1362, a two-page</p> <p>20 document.</p> <p>21 BY MR. SCHWABENLAND:</p> <p>22 Q. That shows roughly 29 cases on</p> <p>23 there, starting with, I believe, a January of</p> <p>24 2015 claim on the first page there and it goes</p>

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<p style="text-align: right;">Page 26</p> <p>1 to 2018. Then I believe that the university, 2 with my thanks, placed on there your initials, 3 "EM," on any cases that you handled during the 4 investigation. So some of those 29 cases, 5 some of those were handled by somebody else, I 6 take it. Is that your understanding? 7 A. I can't make an understanding 8 from the document, obviously. 9 Q. Fair enough. 10 A. But I have worked with another 11 person or two at my firm. 12 Q. Okay. 13 A. So yes, I would not do them 14 all. 15 Q. Okay. But the only reason I 16 show that to you now is that at least those 17 two documents are for a claim in January of 18 2015; am I correct, at the top there? 19 A. Yes. 20 Q. Okay. But you believe that you 21 started to do investigation into sexual 22 misconduct claims earlier than that, right? 23 A. I thought it was longer. I 24 don't have a firm recollection of that.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And at least, you were doing 2 that in 2015 if not beforehand, right? 3 A. Correct. 4 Q. Okay. And you continued to do 5 that until you left Buchanan Ingersoll? 6 A. Yes. 7 Q. And did you continue to do that 8 since joining Cozen O'Connor? 9 A. Yes. 10 Q. While at Buchanan Ingersoll, 11 other than doing investigative work for St. 12 Joe's University involving Title IX violations 13 or sexual misconduct, did you do any such 14 investigation on behalf of any other teaching 15 institution or university or college? 16 A. Yes. 17 Q. And what other institutions 18 have you done work for? 19 A. I don't feel like I can 20 disclose client names. 21 Q. Oh. Okay. How many were 22 there? 23 A. One. 24 Q. Okay. And is that in the</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Okay. Well, we'll make an 2 inquiry to see if there were any other cases 3 before you. I will represent to you that the 4 sexual misconduct policy became effective at 5 St. Joe's university as of June 2015 and 6 during the 2015 period before that starting in 7 January there was an interim sexual misconduct 8 policy in place, but before that they didn't 9 have a separate sexual misconduct policy. The 10 only reason I throw that out to you, do you 11 believe that you were involved in any 12 investigations on behalf of the university 13 into claims of sexual misconduct prior to 14 2015? 15 A. I have no firm recollection of 16 that. It just seems to me that I did it for 17 more than three years, but I have no firm 18 recollection of that. 19 Q. Okay. Thank you. You can put 20 that down or aside. We'll get to that later. 21 But you believe while with Buchanan Ingersoll 22 you were doing investigative work on sexual 23 misconduct claims for St. Joe's University? 24 A. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 Philadelphia area? 2 A. Yes. 3 Q. And when did you start to do 4 investigation for that one teaching 5 institution? 6 A. It's hard for me to put it in 7 any time frame. I would estimate three to 8 four years ago. 9 Q. Okay. So was that before or 10 after you began with St. Joe's University? 11 A. I believe it was after. 12 Q. After. Okay. And have you 13 continued to do investigative work 14 periodically for that teaching institution? 15 A. I have not been asked to do 16 anything else. 17 Q. If you can approximate for me, 18 when was the last time that you did any 19 investigative work into Title IX violations or 20 claims of sexual misconduct for that other 21 teaching institution? 22 A. When was the last time I did 23 it? 24 Q. Yes.</p>

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<p style="text-align: right;">Page 30</p> <p>1 A. I only did one and, my best 2 estimate, it was three to four years ago. 3 Q. Okay. 4 A. May I ask a clarification? 5 Q. Sure. 6 A. So I understood your question 7 to be Title IX, sexual misconduct. 8 Q. Yes. 9 A. Title IX also applies to 10 employees in an area that would not 11 necessarily be sexual misconduct. 12 Q. Okay. 13 A. And I represented one other 14 teaching institution -- not represented. I 15 did an investigation for one other teaching 16 institution. It was a claim by a faculty 17 member against a faculty member. It was not 18 misconduct, but I wanted to make sure I 19 understood your question. 20 Q. Is that another institution 21 other than the one you said you did work for 22 and then St. Joe's? 23 A. It is. 24 Q. How many investigations did you</p>	<p style="text-align: right;">Page 32</p> <p>1 it as hostile work environment. It was 2 somebody who was claiming they should have 3 been promoted. 4 Q. But for that one that you did, 5 that teaching institution, that didn't involve 6 a claim of sexual misconduct, right? 7 A. The latter one, the 2017 one, 8 did not. 9 Q. Okay. And how about the other 10 one that you identified that you did one 11 investigation for? 12 A. The earlier one I would 13 characterize as sexual misconduct. 14 Q. And would that be a student 15 claim against another student or -- 16 A. Yes. 17 Q. Okay. Was that the first 18 investigation you did in the nature of higher 19 education and claims of sexual misconduct or 20 had you -- 21 A. Other than St. Joe's? 22 Q. Yes. 23 A. I believe it was the first 24 other than St. Joe's. I had started the St.</p>
<p style="text-align: right;">Page 31</p> <p>1 do for that teaching institution, that one? 2 A. Just one. 3 Q. And when about did you do that? 4 A. It was while I was leaving 5 Buchanan to come to Cozen. So it was spring, 6 summer of 2017. 7 Q. Okay. And the nature of that 8 claim was one employee of the school? 9 A. Yes. 10 Q. Was that a faculty member -- 11 A. Yes. 12 Q. -- was making a claim against 13 another faculty member? 14 A. Yes. It had to do with tenure 15 proceedings, I believe. 16 Q. Okay. 17 A. Promotion and tenure. 18 Q. Okay. And was the nature of 19 that claim in the nature of harassment or 20 hostile work environment or what, if you can 21 recall? 22 A. It was gender and race. 23 Q. Discrimination? 24 A. Yes. I would not characterize</p>	<p style="text-align: right;">Page 33</p> <p>1 Joe's ones earlier. 2 Q. Okay. While at Buchanan 3 Ingersoll -- I will finish up that and get to 4 your present firm -- I take it you continued 5 in the labor and employment section? 6 A. Yes. 7 Q. And did you handle any claims 8 of sexual misconduct against an employer or 9 representative of the employer? 10 A. I'm sure I handled sexual 11 harassment claims. 12 Q. Okay. 13 A. I'm not sure if you're making a 14 distinction between harassment and misconduct. 15 Q. Unless the sexual harassment is 16 in the nature of seeking favors or sexual 17 gratification, that's what I am referring to. 18 MR. MYERS: Could you restate 19 the question, because I don't 20 understand it at this point. 21 MR. SCHWABENLAND: Sure. 22 BY MR. SCHWABENLAND: 23 Q. You just raised a good point. 24 You handled sexual harassment claims. There's</p>

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<p style="text-align: right;">Page 34</p> <p>1 also sexual misconduct claims where one 2 employee might accuse another employee, such 3 as a supervisor, of trying to gain sexual 4 favors, right? That's what I am referring to. 5 While you were with Buchanan Ingersoll did you 6 handle any of those claims, if you can 7 remember? 8 A. Not that I recall. I believe 9 they were strictly what I would call sort of 10 hostile work environment claims. 11 Q. Okay. Then when you joined 12 Cozen O'Connor, you're a partner there? 13 A. Member. 14 Q. Member. Okay. I am not sure 15 how they have their firm set up. But are you 16 in the labor and employment section? 17 A. Yes, I am. 18 Q. Do you continue to represent 19 only employers? 20 A. Yes. 21 Q. And you have continued to do 22 periodic investigation for St. Joe's 23 University up until the present? 24 A. Yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I believe so. So the sexual 2 misconduct policy refers to -- I believe it's 3 called non-discrimination, harassment, 4 anti-retaliation policy. So those two 5 policies can apply to any given situation. 6 Q. Okay. But the reason I raise 7 this now is, did you do any investigation for 8 St. Joe's or have you done any investigation 9 for St. Joe's when there are claims of 10 nonsexual violations? 11 A. I have, but they would not be 12 regarding students. 13 Q. So they would be regarding a 14 faculty member or employees of the university? 15 A. Yes. 16 Q. Okay. How many can you recall 17 doing? Is this an infrequent thing? 18 A. My best recollection is maybe 19 two a year. 20 Q. Okay. 21 A. Two to three a year, and not 22 every year. 23 Q. And would this be even before 24 they formed the sexual misconduct policy in</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. And would all those 2 investigations have involved some type of 3 claims of sexual misconduct? 4 A. Under the sexual misconduct 5 policy? 6 Q. Yes. 7 A. Yes. 8 Q. But you interact with a number 9 of people at St. Joe's University; is that 10 correct? 11 A. Yes. 12 Q. By "interaction," I mean you 13 have contacts with them. And one of those 14 contacts would be the section called Community 15 Standards; is that correct? 16 A. Yes. 17 Q. And Mr. Bodak [sic] heads up 18 that section; is that your understanding? 19 A. Bodak, yes. 20 Q. Bodak. And the reason I say 21 that, at least since 2015 there's a separate 22 policy for the handling of sexual misconduct 23 claims as opposed to nonsexual misconduct 24 claims; is that your understanding?</p>	<p style="text-align: right;">Page 37</p> <p>1 2015? 2 A. That doesn't mean anything to 3 me, so it's hard for me to judge. So is your 4 question is it before 2015? 5 Q. Yes, ma'am. 6 A. I believe so. 7 Q. Okay. And are you able to 8 estimate how far it has gone back other than 9 what you've already said? I think you said 10 six or seven years. 11 A. That's my best estimate. 12 Q. Okay. Would there be any 13 way -- not now, but when you get back to your 14 office -- of checking what work you may have 15 done before 2015 on behalf of St. Joe's 16 University? 17 A. There is not, because I'm no 18 longer at Buchanan, so I don't have access to 19 that. 20 Q. Oh. Okay. I started to ask 21 you the questions about if you performed any 22 investigations of any claims that were 23 nonsexual in nature and you said there have 24 when they involve employees of the university</p>

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<p style="text-align: right;">Page 38</p> <p>1 or staff members, right?</p> <p>2 A. Correct.</p> <p>3 Q. What would be the nature of</p> <p>4 those claims, then? Would that be tenure</p> <p>5 again or some type of harassment or anything</p> <p>6 like that, or discrimination?</p> <p>7 A. There's been various ones. I</p> <p>8 don't believe any of them have been sexual</p> <p>9 harassment.</p> <p>10 Q. And have any of them, to your</p> <p>11 knowledge, been Title IX violation claims?</p> <p>12 A. Well, Title IX does apply to</p> <p>13 employees.</p> <p>14 Q. That's right.</p> <p>15 A. There may have been. This is</p> <p>16 generally.</p> <p>17 Q. Sure.</p> <p>18 A. They've generally been an</p> <p>19 employee who doesn't get along with their boss</p> <p>20 or doesn't see eye to eye with their boss and</p> <p>21 may have been disciplined, for example.</p> <p>22 Q. Or, I take it, tenure issues?</p> <p>23 A. I've not done a tenure one for</p> <p>24 St. Joe's.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Go ahead.</p> <p>2 A. It looks like this sheet was</p> <p>3 based on the sexual misconduct policy.</p> <p>4 Q. That's my understanding.</p> <p>5 A. So my other investigations</p> <p>6 would be based on the nondiscrimination,</p> <p>7 harassment policy.</p> <p>8 Q. Okay. And in those type of</p> <p>9 cases were you asked by Community Standards to</p> <p>10 do the initial investigation?</p> <p>11 A. There's been a change in their</p> <p>12 process. I would typically have not been</p> <p>13 asked by Community Standards. I would be</p> <p>14 asked by human resources. The human resources</p> <p>15 person resigned recently.</p> <p>16 Q. Who is that?</p> <p>17 A. Nancy DuBois was her name. And</p> <p>18 I believe on an interim basis, until that</p> <p>19 position is filled, Mary-Elaine Perry has</p> <p>20 taken over that role.</p> <p>21 Q. And it's my understanding that</p> <p>22 Ms. Perry is the Title IX coordinator?</p> <p>23 A. Yes.</p> <p>24 Q. And it's my understanding, if</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Okay.</p> <p>2 A. So, to answer your question, if</p> <p>3 an employee claims they have some problem with</p> <p>4 their boss and it's on account of gender, my</p> <p>5 opinion would be, in the big picture that</p> <p>6 could be Title IX.</p> <p>7 Q. Okay. Looking at Exhibit-1</p> <p>8 there, do you believe that there are</p> <p>9 additional investigations you have done during</p> <p>10 that time period of January 2015 to the</p> <p>11 present, 2018, involving claims by employees</p> <p>12 or staff members of the university of some</p> <p>13 type of nonsexual impropriety?</p> <p>14 A. Yes.</p> <p>15 Q. And since joining Cozen</p> <p>16 O'Connor, and that would be in 2017, would you</p> <p>17 be able to determine what other cases you've</p> <p>18 handled on behalf of St. Joe's University to</p> <p>19 investigate?</p> <p>20 A. I believe so.</p> <p>21 Q. Okay. Now, when you handle</p> <p>22 those nonsexual claims --</p> <p>23 A. Let me maybe clarify your</p> <p>24 question.</p>	<p style="text-align: right;">Page 41</p> <p>1 you know, that Ms. Perry, Dr. Perry is --</p> <p>2 plans to leave the university?</p> <p>3 A. I've not heard that.</p> <p>4 Q. Okay. You don't know anything</p> <p>5 about her being an interim Title IX</p> <p>6 coordinator at present?</p> <p>7 A. I always thought she was the</p> <p>8 Title IX coordinator. I've never heard</p> <p>9 interim.</p> <p>10 Q. Dr. Perry was already deposed</p> <p>11 here. It's my understanding she's the vice</p> <p>12 president and in addition to that she was</p> <p>13 assigned to be the Title IX coordinator. Is</p> <p>14 that your understanding?</p> <p>15 A. That's my understanding.</p> <p>16 Q. And in addition to that she has</p> <p>17 also assumed the interim role as head of HR?</p> <p>18 A. No. I believe -- and this</p> <p>19 happened relatively recently and I think it's</p> <p>20 just to fill in until this other person is</p> <p>21 replaced -- she was asked to handle being the</p> <p>22 coordinator with investigators -- and I am not</p> <p>23 the only one -- investigators on faculty/staff</p> <p>24 complaints, non-student complaints.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. But any faculty/staff 2 complaints are handled through HR, right? 3 A. Correct. 4 Q. And not through community 5 service [sic]? 6 A. That is correct. 7 Q. And tell me the procedure. Are 8 you the investigator and decision maker in 9 that or are you the investigator who issues a 10 report and it goes to a hearing officer? 11 A. There's multiple investigators, 12 so I am not at all the only one, but I issue a 13 report with findings and conclusions and 14 provide that to the university. 15 Q. Okay. 16 A. I don't believe there's a 17 hearing. 18 Q. And I take it that would be in 19 accordance with the employee handbook, then? 20 A. Policy. 21 Q. Policy. Okay. I am jumping 22 ahead here. It's my understanding that you, 23 Cozen O'Connor, presently has an engagement 24 letter for 2018 with St. Joe's University,</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. MYERS: If you're going to 2 have questions about the document, I 3 would like it to be marked. 4 MR. SCHWABENLAND: Okay. Then 5 mark it. 6 7 (Whereupon, Exhibit Malloy-2 8 was marked for purposes of 9 identification.) 10 11 BY MR. SCHWABENLAND: 12 Q. Are you familiar with that? 13 A. I am. 14 Q. For the purposes of the record, 15 it's marked as Exhibit-2. Am I correct that 16 that was submitted by you on behalf of your 17 employer, Cozen O'Connor, to the university on 18 March 5th, 2018 and it was submitted to Carey 19 Anderson, the vice president, care of Marianne 20 Schimelfenig, as general counsel. Did I read 21 that correctly? 22 A. Yes. 23 Q. And, essentially, am I correct 24 that it's for the period from January 1, 2018</p>
<p style="text-align: right;">Page 43</p> <p>1 right? 2 A. Correct. 3 Q. Did you have any engagement 4 letter with St. Joe's University before? 5 A. Yes. 6 Q. Okay. And so was there an 7 engagement letter each year with St. Joe's 8 University? 9 A. I believe so. 10 Q. Are you familiar with the 11 engagement letter in place? 12 A. Yes. 13 Q. The present engagement letter, 14 as I understand it, this is for 2018, and a 15 letter was issued in March of 2018 but made 16 effective for all of 2018. Is that your 17 understanding? 18 A. I don't recall. 19 Q. Okay. Let me hand it to you. 20 We are not going to make in an exhibit, but I 21 am going to identify this as SJU Bates stamp 22 1052 up through 1055. Let me hand it to you. 23 I am going to have some questions, but I'll 24 just let you look it over.</p>	<p style="text-align: right;">Page 45</p> <p>1 through December 31, 2018? It's on the bottom 2 on the first page. 3 A. Correct. 4 Q. And, again, if I understand 5 correctly, Cozen O'Connor is placed on a 6 retainer of \$5,750 a month; is that correct? 7 A. Yes. 8 Q. And plus there are expenses 9 that you may incur doing what you need to do, 10 right? 11 A. Yes. 12 Q. And in accordance with that 13 agreement that would cover any investigation 14 performed by you in the area of sexual 15 misconduct claims up to 11? 16 A. Yes. 17 Q. Okay. And then what happens if 18 there's more than 11? 19 A. The agreement says if there is 20 more than 11, investigations will be outside 21 of the retainer and billed at some agreed-upon 22 rate. 23 Q. So that's later to be 24 determined?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A. Correct.</p> <p>2 Q. In looking at the Exhibit-1</p> <p>3 there, at least from 2015 to 2018, I don't</p> <p>4 believe that any of those -- the number of</p> <p>5 claims exceeded 11 any given year, either by</p> <p>6 the ones you did -- and that would include the</p> <p>7 ones you did along with what others may have</p> <p>8 done?</p> <p>9 A. Correct.</p> <p>10 Q. So if you are on a monthly</p> <p>11 retainer, that comes up to about \$69,000 per</p> <p>12 year that the firm is retained by the</p> <p>13 university; is that correct?</p> <p>14 A. I didn't do the math, but that</p> <p>15 sounds close.</p> <p>16 Q. I did. Take my word for it.</p> <p>17 If there are less than 11, then whatever that</p> <p>18 number is you'll do and you still get the</p> <p>19 total amount of \$5,750 per month for 12</p> <p>20 months, right?</p> <p>21 A. Yes. And then the letter says</p> <p>22 that the university would be given a credit</p> <p>23 the following year if there's fewer.</p> <p>24 Q. A credit. Okay. So if I</p>	<p style="text-align: right;">Page 48</p> <p>1 over? Explain that to me.</p> <p>2 A. If we would have 10</p> <p>3 investigations, not 11, then in the following</p> <p>4 year retainer the university would get a</p> <p>5 credit. They all get worked out on a</p> <p>6 year-to-year basis, but next year might be 12</p> <p>7 investigations for the same flat rate.</p> <p>8 Q. But how about, again, if</p> <p>9 there's only six cases?</p> <p>10 A. I guess that would need to be</p> <p>11 determined. But the agreement says if there</p> <p>12 are fewer than 11 the firm agrees to give a</p> <p>13 credit the following year.</p> <p>14 Q. Okay. So the credit means that</p> <p>15 you would add on the number of cases for that</p> <p>16 same agreed-upon monthly fee?</p> <p>17 A. Correct.</p> <p>18 Q. Okay.</p> <p>19 A. But I would say if there were</p> <p>20 only six, for example, we might refund money.</p> <p>21 We would have to deal with it on a</p> <p>22 case-by-case basis.</p> <p>23 Q. If my calculations are correct,</p> <p>24 on Exhibit-2, in 2015 there were six cases of</p>
<p style="text-align: right;">Page 47</p> <p>1 understand correctly, you are now paid a flat</p> <p>2 fee for each -- in 2018 a flat fee for each</p> <p>3 investigation or case you handled?</p> <p>4 A. That's not correct. We are</p> <p>5 paid a flat fee per month.</p> <p>6 Q. Per month. But that per month</p> <p>7 would cover up to 11 cases, right?</p> <p>8 A. Correct.</p> <p>9 Q. And so if there's six cases you</p> <p>10 would handle then you would get a fee of at</p> <p>11 least six times \$5,750, right?</p> <p>12 A. I don't understand your</p> <p>13 question.</p> <p>14 Q. If you handle a case you don't</p> <p>15 get more than the monthly retainer, right?</p> <p>16 A. Correct. We get the monthly</p> <p>17 retainer every month.</p> <p>18 Q. And in 2018 have you continued</p> <p>19 to get a monthly retainer every month?</p> <p>20 A. Yes.</p> <p>21 Q. Now, you said it's carried over</p> <p>22 if you don't get 11?</p> <p>23 A. Correct.</p> <p>24 Q. So what do you mean, carried</p>	<p style="text-align: right;">Page 49</p> <p>1 sexual misconduct claims that you handled and</p> <p>2 three others were handled by somebody else for</p> <p>3 a total of nine. Go ahead and take a look at</p> <p>4 it. I should warn you, there is a number out</p> <p>5 of date sequence there, but it's 2015.</p> <p>6 A. I see it down here. So I am</p> <p>7 counting nine for 2015.</p> <p>8 Q. And I'll finish this up while</p> <p>9 you've got it. In 2016 I believe it shows</p> <p>10 that there were eight cases of sexual</p> <p>11 misconduct claims investigated by you for that</p> <p>12 year.</p> <p>13 A. That's what the document shows.</p> <p>14 Q. And in 2017 there were four</p> <p>15 sexual misconduct claims handled by you and</p> <p>16 three others were handled by somebody else or</p> <p>17 one or more other people, so for a total of</p> <p>18 seven, it should be?</p> <p>19 A. I am counting eight for 2017.</p> <p>20 Q. We'll go with your thing. And</p> <p>21 in 2018 how many have there been by you and</p> <p>22 the others?</p> <p>23 A. According to this document</p> <p>24 there is three for me for 2018 and one by</p>

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<p style="text-align: right;">Page 50</p> <p>1 somebody else.</p> <p>2 Q. So there's four. Okay. To</p> <p>3 your knowledge, has there been an engagement</p> <p>4 letter issued for each year, 2015, 2016, 2017,</p> <p>5 2018?</p> <p>6 A. I believe so.</p> <p>7 Q. Okay. And has the monthly fee</p> <p>8 increased or been the same, if you know?</p> <p>9 A. I believe it's decreased.</p> <p>10 Q. Decreased. Okay. Do you know</p> <p>11 what it was last year?</p> <p>12 A. I don't have an exact number,</p> <p>13 but I believe it was \$6,000. It was a little</p> <p>14 bit higher than the 5,750.</p> <p>15 Q. Do you know if it has decreased</p> <p>16 each year from 2015 to 2018, if you know?</p> <p>17 A. I don't know that for sure.</p> <p>18 Q. I will follow through with one</p> <p>19 other thing. Do you know if it increased at</p> <p>20 all from 2015 to 2016 or 2017?</p> <p>21 A. I do not believe that it has</p> <p>22 increased.</p> <p>23 Q. Okay. Now, am I correct that</p> <p>24 the engagement letter only refers to your</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Okay. And each case would be</p> <p>2 billed separately and submitted to what, HR?</p> <p>3 A. Yes.</p> <p>4 Q. Your yearly engagement letters</p> <p>5 for 2015, 2016, 2017, that would reflect,</p> <p>6 whatever it was, a flat monthly fee going to</p> <p>7 the firm by the university, right?</p> <p>8 A. Yes. It would be similar up to</p> <p>9 a certain number of investigations.</p> <p>10 Q. Okay. But do you know if the</p> <p>11 cases, for instance, 2018, the payments there</p> <p>12 on a monthly basis would include coverage for</p> <p>13 investigations of up to 11 cases, right?</p> <p>14 A. Correct.</p> <p>15 Q. Do you know if the same number</p> <p>16 of cases were in effect for previous</p> <p>17 engagement letters?</p> <p>18 A. The number has definitely come</p> <p>19 down. I don't know if it has come down every</p> <p>20 single year.</p> <p>21 Q. Okay.</p> <p>22 MR. MYERS: In the next ten</p> <p>23 minutes I would like a five-minute</p> <p>24 break, since we have been at this for</p>
<p style="text-align: right;">Page 51</p> <p>1 handling -- by you I mean your firm's handling</p> <p>2 of sexual misconduct claims?</p> <p>3 A. Yes.</p> <p>4 Q. And so is there a separate</p> <p>5 engagement letter if you handle investigations</p> <p>6 for nonsexual claims, such as HR asking you to</p> <p>7 do that?</p> <p>8 A. I believe so.</p> <p>9 Q. And is that a flat fee, monthly</p> <p>10 retainer?</p> <p>11 A. It is not. I'm sorry to</p> <p>12 interrupt you.</p> <p>13 Q. That's okay. You didn't. Is</p> <p>14 that by the hour, then?</p> <p>15 A. Yes.</p> <p>16 Q. And your fee for that</p> <p>17 investigation, I take it for those types of</p> <p>18 cases there in all likelihood would be more</p> <p>19 time spent for your investigation?</p> <p>20 A. It really depends.</p> <p>21 Q. Okay. Your hourly fee for</p> <p>22 those investigations as of this year, what is</p> <p>23 it?</p> <p>24 A. I believe it's \$400 an hour.</p>	<p style="text-align: right;">Page 53</p> <p>1 an hour.</p> <p>2 MR. SCHWABENLAND: Why don't we</p> <p>3 take a five-minute break.</p> <p>4 MR. MYERS: It's your call.</p> <p>5 MR. SCHWABENLAND: Okay. Thank</p> <p>6 you.</p> <p>7</p> <p>8 (Whereupon, a recess was held</p> <p>9 from 11:00 a.m. to 11:07 a.m.)</p> <p>10</p> <p>11 BY MR. SCHWABENLAND:</p> <p>12 Q. Do you believe that your firm,</p> <p>13 Cozen O'Connor, would have any other</p> <p>14 engagement letters with the university other</p> <p>15 than the March 5th, 2018 one that's marked</p> <p>16 Exhibit-2?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Okay.</p> <p>19 A. When we came from Buchanan we</p> <p>20 took some stuff with us, but, like, 25 people</p> <p>21 moved at the same time, so we weren't able to</p> <p>22 take extra stuff.</p> <p>23 Q. When you were with Buchanan you</p> <p>24 definitely started to do work for St. Joe's</p>

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<p style="text-align: right;">Page 54</p> <p>1 University, right?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And were other</p> <p>4 individuals doing work for St. Joe's</p> <p>5 University in the nature of investigating</p> <p>6 sexual misconduct claims or policies?</p> <p>7 A. At Buchanan?</p> <p>8 Q. Yes.</p> <p>9 A. Yes.</p> <p>10 Q. And were they doing it before</p> <p>11 you started?</p> <p>12 A. No.</p> <p>13 Q. And so were you the primary</p> <p>14 person when you were at Buchanan Ingersoll</p> <p>15 do the investigative work for St. Joe's</p> <p>16 University on sexual misconduct claims?</p> <p>17 A. I would agree with that, yes.</p> <p>18 Q. And I take it that the other</p> <p>19 attorneys that did investigation on sexual</p> <p>20 misconduct claims at the University of St.</p> <p>21 Joe's, they were also employed by Buchanan</p> <p>22 Ingersoll?</p> <p>23 A. Yes.</p> <p>24 Q. And when you left to go to</p>	<p style="text-align: right;">Page 56</p> <p>1 A. I am not aware of anybody.</p> <p>2 Q. How about when you were at</p> <p>3 Buchanan Ingersoll, same question?</p> <p>4 A. I would not be aware of anyone</p> <p>5 else.</p> <p>6 Q. Okay. When you were with</p> <p>7 Buchanan Ingersoll, did that firm represent</p> <p>8 St. Joe's University, to your knowledge?</p> <p>9 A. No.</p> <p>10 Q. And other than you doing</p> <p>11 investigations, either appointment by HR or</p> <p>12 staff-related claims, whether Title IX or</p> <p>13 nonsexual claims, or doing sexual misconduct</p> <p>14 claims by students -- I just forgot my</p> <p>15 question.</p> <p>16 MR. MYERS: I was going to</p> <p>17 object. You saved me.</p> <p>18 BY MR. SCHWABENLAND:</p> <p>19 Q. Let me go back to Buchanan</p> <p>20 Ingersoll, if I may. When you were at</p> <p>21 Buchanan Ingersoll -- and I think I just asked</p> <p>22 you this -- did that firm, to your knowledge,</p> <p>23 represent St. Joe's University for any reason?</p> <p>24 MR. MYERS: Other than?</p>
<p style="text-align: right;">Page 55</p> <p>1 Cozen O'Connor did those attorneys go with</p> <p>2 you?</p> <p>3 A. They did not.</p> <p>4 Q. Okay. Did they continue to do</p> <p>5 any work, to your knowledge, after you left</p> <p>6 Buchanan Ingersoll?</p> <p>7 A. Not that I am aware of.</p> <p>8 Q. And since joining Cozen</p> <p>9 O'Connor I take it that there is, what, one or</p> <p>10 two other attorneys if you're not available</p> <p>11 who would do the investigation?</p> <p>12 A. Yes.</p> <p>13 Q. And do you assign the person</p> <p>14 who is to do the investigation?</p> <p>15 A. Bill Bordak can call whoever he</p> <p>16 chooses. I believe he generally calls me and</p> <p>17 then we try to figure out based on</p> <p>18 availability and schedules who would be the</p> <p>19 best person.</p> <p>20 Q. Okay. Do you know if there are</p> <p>21 any other attorneys in other firms who perform</p> <p>22 investigative work now for St. Joe's</p> <p>23 University on sexual misconduct claims other</p> <p>24 than your firm?</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. SCHWABENLAND: Other than</p> <p>2 your investigation.</p> <p>3 MR. MYERS: Other than through</p> <p>4 Elizabeth Malloy?</p> <p>5 MR. SCHWABENLAND: Yes.</p> <p>6 THE WITNESS: Not that I am</p> <p>7 aware of.</p> <p>8 BY MR. SCHWABENLAND:</p> <p>9 Q. Same question, while you're at</p> <p>10 Buchanan Ingersoll, did anyone, to your</p> <p>11 knowledge, represent any individuals who were</p> <p>12 associated with St. Joe's University?</p> <p>13 A. Not that I am aware of.</p> <p>14 Q. Did you ever represent any</p> <p>15 individuals who were associated with St. Joe's</p> <p>16 University?</p> <p>17 A. No.</p> <p>18 Q. And since joining Cozen</p> <p>19 O'Connor do you know if that firm does any</p> <p>20 other work for St. Joe's University?</p> <p>21 A. It does not.</p> <p>22 Q. Since joining Cozen O'Connor</p> <p>23 have you represented the school for any other</p> <p>24 reason?</p>

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<p style="text-align: right;">Page 58</p> <p>1 A. No.</p> <p>2 Q. Have you represented any other</p> <p>3 individuals associated with the school?</p> <p>4 A. No.</p> <p>5 Q. And I take it both while you</p> <p>6 were at Buchanan Ingersoll and presently at</p> <p>7 Cozen O'Connor you don't handle any labor or</p> <p>8 employment issues on behalf of St. Joe's</p> <p>9 University?</p> <p>10 A. That's correct.</p> <p>11 Q. How did you come to be</p> <p>12 contacted about representing St. Joe's by</p> <p>13 handling investigation of claims?</p> <p>14 A. Ms. Schimelfenig called me at</p> <p>15 some point.</p> <p>16 Q. And had you known her?</p> <p>17 MR. MYERS: Ed, you said</p> <p>18 "represented St. Joe's" and I don't</p> <p>19 think you meant that. I think you</p> <p>20 meant retained by St. Joe's, but I</p> <p>21 just would like the record to be</p> <p>22 clear.</p> <p>23 MR. SCHWABENLAND: So you want</p> <p>24 me to rephrase that?</p>	<p style="text-align: right;">Page 60</p> <p>1 A. I believe so.</p> <p>2 Q. Okay. And who were you</p> <p>3 interviewed by?</p> <p>4 A. I don't recall the individual's</p> <p>5 name. It was the provost. It was a</p> <p>6 gentleman.</p> <p>7 Q. Okay. Did you have a meeting</p> <p>8 with the provost and other people or just the</p> <p>9 provost?</p> <p>10 A. I sort of recall there being</p> <p>11 two people there, but I don't know who the</p> <p>12 other person was.</p> <p>13 Q. How about Ms. Schimelfenig, was</p> <p>14 she there?</p> <p>15 A. I don't believe so.</p> <p>16 MR. SCHWABENLAND: Off the</p> <p>17 record.</p> <p>18 - - -</p> <p>19 (Off the record)</p> <p>20 - - -</p> <p>21 BY MR. SCHWABENLAND:</p> <p>22 Q. And so what did you discuss?</p> <p>23 A. We discussed my academic</p> <p>24 background, I think, for the most part.</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. MYERS: If you would.</p> <p>2 MR. SCHWABENLAND: Okay.</p> <p>3 BY MR. SCHWABENLAND:</p> <p>4 Q. Put in the word retain and you</p> <p>5 said Ms. Schimelfenig contacted you?</p> <p>6 A. Correct.</p> <p>7 Q. Had you known her before that?</p> <p>8 A. I did not.</p> <p>9 Q. And, again, you wouldn't know</p> <p>10 when this was, would you?</p> <p>11 A. I do not.</p> <p>12 Q. And what did she say? What did</p> <p>13 she ask you?</p> <p>14 A. I believe she said that there</p> <p>15 was a need for an investigation, it was a</p> <p>16 nonsexual misconduct claim, and that she had</p> <p>17 received my name from somebody, as I recall,</p> <p>18 and is that something I would be willing and</p> <p>19 available to do.</p> <p>20 Q. Okay. Do you know who she</p> <p>21 received your name from?</p> <p>22 A. I do not.</p> <p>23 Q. So did you go and were you</p> <p>24 interviewed by anybody at St. Joe's?</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. What was your academic</p> <p>2 background as of that time, whenever you were</p> <p>3 talking?</p> <p>4 A. Archbishop Prendergast High</p> <p>5 School, Catholic University of America,</p> <p>6 Villanova.</p> <p>7 Q. How about the training that you</p> <p>8 had, anything?</p> <p>9 A. We may have. I don't remember</p> <p>10 that meeting in a lot of detail.</p> <p>11 Q. Did they ask you any questions</p> <p>12 about training that you had to conduct the</p> <p>13 investigations, anything like that?</p> <p>14 A. I don't remember.</p> <p>15 Q. How soon after that did you</p> <p>16 begin to do work for them?</p> <p>17 A. My recollection is within a</p> <p>18 couple of weeks.</p> <p>19 Q. Okay. So I take it you</p> <p>20 initially spoke about your fee for services?</p> <p>21 A. Probably.</p> <p>22 Q. When you first started was that</p> <p>23 on an hourly basis?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. And, again, this would involve 2 an investigation into a nonsexual matter 3 involving faculty? 4 A. Yes. It was under the 5 nondiscrimination policy. 6 Q. Okay. And so you did that one 7 investigation. How soon did you get any other 8 investigations? 9 A. I don't recall. As I think I 10 said earlier, there's probably been one to 11 three a year, two to three a year. 12 MR. SCHWABENLAND: Just for the 13 record, I am going to ask you -- and I 14 will send you a letter -- the 15 university produce records concerning 16 the other investigations, if they do 17 exist. 18 MR. MYERS: You go ahead and 19 ask. You're beyond the discovery 20 period. We will take it up and we 21 will make a decision. 22 MR. SCHWABENLAND: Thank you. 23 BY MR. SCHWABENLAND: 24 Q. Let's go to your meeting with</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Well after? Okay. And what do 2 you recall of the discussion? 3 A. I believe she said that they 4 were changing the process at the university, 5 that investigations may have been done 6 internally with some public safety involvement 7 and that she was involved with Community 8 Standards and outside counsel to change the 9 process. 10 Q. Okay. And did she get into 11 what that process would look like? 12 A. I don't believe it was on that 13 phone call, but eventually I did learn what 14 the process would look like. 15 Q. Up until that time were you 16 aware of what the process had formerly been at 17 St. Joe's University? 18 A. I had not been involved in any 19 sexual misconduct investigations prior to when 20 we started doing them. I learned through the 21 process of being retained a little bit about 22 it, but I would have no first-hand knowledge. 23 Q. Okay. Again, I'll represent to 24 you that the sexual misconduct policy became</p>
<p style="text-align: right;">Page 63</p> <p>1 the provost. You believe there was one 2 meeting before you began the assignment? 3 A. Yes. 4 Q. And was that the only meeting 5 you had? I said the meeting with the provost. 6 Did you meet with anybody else concerning you 7 undertaking to review or investigate claims? 8 A. No, I do not believe so, just 9 one meeting. 10 Q. Okay. So other than talking 11 about your educational background and who you 12 are with and perhaps a fee for services, was 13 there any discussion concerning your training 14 or anything? 15 A. There may have been. I don't 16 remember much about that meeting. 17 Q. Okay. Do you know how you came 18 to be selected to perform investigations 19 concerning sexual misconduct claims by 20 students involving Title IX violations? 21 A. Ms. Schimelfenig called me. 22 Q. Is this after you got a call 23 from her and you met with the provost? 24 A. Well after.</p>	<p style="text-align: right;">Page 65</p> <p>1 effective as of June 2015 and the interim was 2 in place effective as of January of 2015. 3 Were you involved with formulating that 4 policy? 5 A. No. 6 Q. Were you involved in advising 7 the university as to any aspects concerning 8 Title IX? 9 A. No. 10 Q. Had you taken any courses as of 11 that time involving any Title IX continuing 12 legal education courses in that field? 13 A. Yes. 14 Q. And when did you first take 15 courses involving Title IX issues? 16 A. Probably over the last 10 to 12 17 years. 18 Q. And -- 19 A. I am an employment lawyer and 20 Title IX is an employment statute. 21 Q. Okay. And have you presented 22 matters over the last ten years involving 23 Title IX employment issues? 24 A. Presented training?</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. Yes.</p> <p>2 A. No.</p> <p>3 Q. Have you presented any issues</p> <p>4 or discussions? Have you spoken with any</p> <p>5 legal groups or anything concerning that?</p> <p>6 A. On any topic? On what topic?</p> <p>7 Q. On employment Title IX</p> <p>8 violations?</p> <p>9 A. I mean, I speak a lot on</p> <p>10 employment issues. I don't recall anything</p> <p>11 specifically on Title IX.</p> <p>12 Q. Okay. By the way, you are an</p> <p>13 attorney in good standing in the Commonwealth</p> <p>14 of Pennsylvania; is that correct?</p> <p>15 A. I am.</p> <p>16 Q. Okay. And are you admitted to</p> <p>17 any other states?</p> <p>18 A. No.</p> <p>19 Q. And are you admitted to federal</p> <p>20 practice?</p> <p>21 A. Yes.</p> <p>22 Q. As an attorney in good standing</p> <p>23 you have an obligation, as we all do, to take</p> <p>24 continuing legal education courses; is that</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Title IX.</p> <p>2 Q. Okay. And when was that?</p> <p>3 A. Within the last three years, I</p> <p>4 believe.</p> <p>5 Q. And that was an all-day seminar</p> <p>6 on Title IX?</p> <p>7 A. Yes.</p> <p>8 Q. Involving all aspects of Title</p> <p>9 IX?</p> <p>10 A. Yes.</p> <p>11 Q. Is this where you choose to go</p> <p>12 to different sessions or it's --</p> <p>13 A. No. I think it was just one</p> <p>14 day. You had to sit through whatever they</p> <p>15 were presenting. I don't believe there were</p> <p>16 any break-out groups, if that's what you're</p> <p>17 referring to.</p> <p>18 Q. Were there any presentations</p> <p>19 done that you can recall concerning the</p> <p>20 handling of claims of sexual misconduct,</p> <p>21 claims raised by students in a university</p> <p>22 setting, how they should be handled?</p> <p>23 A. I don't remember anything that</p> <p>24 specifically.</p>
<p style="text-align: right;">Page 67</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Have you taken any continuing</p> <p>4 legal education courses concerning</p> <p>5 investigation into sexual misconduct claims by</p> <p>6 students involving Title IX violations?</p> <p>7 A. Is your question limited to for</p> <p>8 CLE credit?</p> <p>9 Q. No. Well, I will limit it to</p> <p>10 CLE credit then I will expand.</p> <p>11 A. I have taken courses, I don't</p> <p>12 believe for CLE credit.</p> <p>13 Q. Okay. And when have you taken</p> <p>14 these courses and who put them on?</p> <p>15 A. I am not going to have a</p> <p>16 recollection of that. I have done a number of</p> <p>17 them over the years.</p> <p>18 Q. Do you know what organizations</p> <p>19 have put it on?</p> <p>20 A. I do specifically recall one by</p> <p>21 Villanova University Law School. That was an</p> <p>22 all-day seminar there, that's why I remember</p> <p>23 that one.</p> <p>24 Q. What was the seminar about?</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. Was there any discussion</p> <p>2 that you can recall, at Villanova when you</p> <p>3 attended, of any Dear Colleague Letters?</p> <p>4 A. There may have been. I don't</p> <p>5 remember.</p> <p>6 Q. Are you familiar with Dear</p> <p>7 Colleague Letters?</p> <p>8 A. I am.</p> <p>9 Q. Are you familiar with Q&As that</p> <p>10 accompanied Dear Colleague Letters?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know when the last Dear</p> <p>13 Colleague Letter and Q&A came out?</p> <p>14 A. It was last fall, 2017.</p> <p>15 Q. Okay. And so that would be</p> <p>16 2017?</p> <p>17 A. Yes.</p> <p>18 Q. And do you know when the</p> <p>19 previous one was, if you know?</p> <p>20 A. I believe it was 2011.</p> <p>21 Q. Okay. When did you first</p> <p>22 become acquainted with Dear Colleague Letters?</p> <p>23 A. I don't know.</p> <p>24 Q. What I'm trying to figure out</p>

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<p style="text-align: right;">Page 70</p> <p>1 is, let's assume there was a 2011 one, did you 2 become acquainted with a Dear Colleague Letter 3 close to the time that it came out or later on 4 did you become acquainted with it? 5 A. It would be close to the time 6 it came out. 7 Q. Okay. And so what was your 8 purpose for becoming acquainted with that? 9 A. I am a labor and employment 10 lawyer and I try to read as much new material 11 on anything that touches any aspect of my 12 practice as I can. 13 Q. Okay. And your conversation 14 with Ms. Schimelfenig about perhaps 15 investigating sexual misconduct claims by 16 students, that conversation was well before, I 17 guess, the Dear Colleague Letter in 2017? 18 A. Yes. 19 Q. Would it have been shortly 20 before the sexual misconduct policy became 21 effective at St. Joe's University in the year 22 2015? 23 A. I believe so. I've told you 24 before, that date doesn't necessarily mean</p>	<p style="text-align: right;">Page 72</p> <p>1 you were with Buchanan Ingersoll? 2 A. Probably. 3 Q. Do you have a list of these 4 courses that you would have taken? 5 A. I do not. 6 Q. So there is no way of telling 7 what courses you have taken? 8 A. Correct. 9 Q. How about training, have you 10 received any training as an investigator? 11 A. Well, I probably would use 12 "courses" and "training" the same. I have 13 been to webinars and seminars that address 14 investigations. 15 Q. And, again, can you identify 16 any? 17 A. NACUA, I believe that there 18 were a few by law firms. 19 Q. A few by? 20 A. By law firms. 21 Q. Okay. Do you recall what law 22 firms? 23 A. I do not. 24 Q. Okay. How about, there's an</p>
<p style="text-align: right;">Page 71</p> <p>1 anything to me, but it would be before the 2 revised sexual misconduct policy came out. 3 Q. Okay. You mentioned Villanova 4 University had a presentation about Title IX. 5 Can you recall any other organizations? 6 A. I read the information almost 7 every year that comes out from the NACUA, 8 National Association of College and University 9 Attorneys, and I have attended a couple 10 webinars, is probably the proper word for 11 that. 12 Q. A webinar is where you sit in 13 your office and take a web course? 14 A. Right. 15 Q. Okay. 16 A. The Villanova one was in 17 person. 18 Q. NACUA, do you recall when you 19 first took a course with them? 20 A. I don't recall the first time. 21 Q. Would it have been before you 22 became an investigator? 23 A. Yes. 24 Q. Do you recall if it was while</p>	<p style="text-align: right;">Page 73</p> <p>1 organization called ATIXA, A-T-I-X-A, are you 2 familiar with that? 3 A. I am not. If you tell me what 4 it stands for I might be, but I am not 5 familiar with the acronym. 6 Q. Association of Title IX 7 Administrators. That's A, association, T is 8 for title, IX is Roman numeral for nine, and 9 then A is the administrators. 10 A. I've heard of them. 11 Q. But you have not taken any 12 courses with them? 13 A. I don't believe so. 14 Q. And have you gotten any of 15 their literature? 16 A. I read a lot of stuff. I am 17 not recalling anything in particular from 18 them. 19 Q. Do you belong to any 20 associations that focus on Title IX? 21 A. No. 22 Q. Have you ever been a member of 23 any association that focuses on Title IX? 24 A. No.</p>

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<p style="text-align: right;">Page 74</p> <p>1 Q. Do you hold any certifications 2 to be a Title IX investigator? 3 A. No. 4 Q. When you began to do work for 5 St. Joe's University that involved acting as 6 an investigator of sexual misconduct claims or 7 Title IX violations raised by students did you 8 get a copy of the student handbook? 9 A. I don't remember that. I was 10 given copies of the policy. 11 Q. Of the sexual misconduct 12 policy? 13 A. Yes. 14 Q. Did you do any investigation of 15 sexual misconduct claims raised by students at 16 St. Joe's University before seeing the sexual 17 misconduct policy or it became effective? 18 A. Or the interim version of it? 19 Q. Yes, 2015. 20 A. I am not remembering the time 21 frame, but I would have seen a copy of the 22 policy. 23 Q. Okay. Were you asked to 24 comment on that policy at all?</p>	<p style="text-align: right;">Page 76</p> <p>1 Did you have to go and meet with anybody else 2 about the sexual misconduct policies before 3 acting as an investigator? 4 A. I believe it was after I was 5 already or being retained to be the 6 investigator, there was a meeting with a large 7 number of people to talk about the process 8 going forward. 9 Q. Okay. Who did you meet with? 10 Do you recall? 11 A. It was a big group of people. 12 I believe all the Community Standards people 13 were there, public safety, athletics, all of 14 the Title IX people, there's multiple ones, 15 Residence Life. Outside counsel was there. 16 Ms. Schimelfenig was. That's all I recall. 17 It was a relatively big meeting. 18 Q. Who was outside counsel? 19 A. I do not know. I believe it 20 was Saul Ewing. I do not know the gentleman's 21 name. 22 Q. Have you since had any 23 communication with this gentleman? 24 A. I have never talked to him</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I was not. 2 Q. So you provided no advice to 3 the university about the wording of the policy 4 or the procedures to be followed? 5 A. That's correct. 6 Q. When you were contacted by Ms. 7 Schimelfenig about perhaps doing investigative 8 work into claims of sexual misconduct raised 9 by students did you have any further 10 discussion with her about your experience or 11 your background or your training? 12 A. I'm sure we did. I don't 13 specifically recall those conversations. 14 Q. You don't recall anything as 15 you sit here? 16 A. Right. 17 Q. Do you recall her asking you, 18 "Have you done any such investigations 19 before?" 20 A. I don't recall the 21 conversation. 22 Q. Did you have to go and meet 23 with anybody else? I know you said you met 24 with the provost on that other type of claim.</p>	<p style="text-align: right;">Page 77</p> <p>1 other than at that meeting. 2 Q. Okay. Would this have been 3 around the time period of the Dear Colleague 4 Letter that came out in September of 2017? 5 A. It was well before. 6 Q. Would this have been around the 7 time period in 2015 when the sexual misconduct 8 policy became effective? 9 A. It was at the point when the 10 process for investigating complaints was 11 changing. 12 Q. Okay. And so you say Community 13 Standards. I take it Mr. Bordak was present? 14 A. Yes. 15 Q. And was Ms. Forte present or -- 16 she may not have been working at the time 17 there? I am not sure. 18 A. I think it was her predecessor. 19 Q. Okay. Public safety, do you 20 recall who that was? 21 A. No. 22 Q. Athletics, do you recall who 23 represented athletics? 24 A. I think there were two people.</p>

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<p style="text-align: right;">Page 78</p> <p>1 Renee Shields, I believe is her name, and she 2 was the primary Title IX contact in athletics. 3 I know she was there. 4 Q. And do you know, does she work 5 with the athletic department? 6 A. Yes. 7 Q. And do you still communicate 8 with her? 9 A. No. 10 Q. And you said somebody was there 11 from Title IX. I know Dr. Perry is a Title IX 12 person. 13 A. It was Dr. Perry and I believe, 14 if you refer to the policy there is maybe two 15 other people with maybe deputy titles, deputy 16 Title IX. My recollection is they were all 17 there. 18 Q. Okay. And was there an agenda 19 written out? 20 A. Not that I know of. There may 21 have been. I didn't do it. 22 Q. Were you meeting all these 23 people for the first time or a lot of these 24 people for the first time?</p>	<p style="text-align: right;">Page 80</p> <p>1 cameras, yes. 2 Q. So it was discussed that that 3 was available should whoever is doing the 4 investigation feel it necessary? 5 A. Yes. It was the role of the 6 people at this meeting to learn about the 7 changes in the policy and what everybody's 8 role, if any, would be. 9 Q. So what major policy changes 10 did they have? 11 A. I don't know because I wasn't 12 involved before. 13 Q. Okay. What was your 14 understanding as to what role you were going 15 to have? 16 A. My understanding was that 17 myself or one of my colleagues would be the 18 investigator under the new policy and prior to 19 that it had been done internally. 20 Q. Prior to that did you have any 21 understanding as to whether or not an initial 22 investigation was done before it was submitted 23 to a hearing officer? 24 A. I don't understand your</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes. 2 Q. What do you recall being 3 discussed at this, in terms of what plans to 4 put into effect about once a claim is made, 5 what does the school do? 6 A. The policy had already changed 7 or was going to be announced that it was 8 changing and Ms. Schimelfenig did a 9 presentation on that. The rest of it was 10 details, you know, who calls who, who would be 11 involved, who could support the investigators 12 if necessary. I remember something came up of 13 if we would need video or something like that, 14 right, there would be a contact in the police 15 department to call. My best description of 16 the meeting would be it was -- after Ms. 17 Schimelfenig did a presentation a lot of it 18 was the details. What would Residence Life 19 do, for example, if a complaint was made to 20 them directly. 21 Q. You mentioned the video. Are 22 you talking about surveillance cameras or 23 things like that? 24 A. The school has a lot of</p>	<p style="text-align: right;">Page 81</p> <p>1 question. 2 MR. MYERS: Me either. 3 BY MR. SCHWABENLAND: 4 Q. Prior to being told that the 5 matter would be investigated by you as an 6 outside person, right, was it your 7 understanding that there had been internal 8 investigations carried out by public safety 9 and then the matter referred to a hearing 10 officer? 11 A. Before the time we were 12 retained to do outside investigations? 13 Q. Yes. 14 A. I think I've heard that from 15 time to time. 16 Q. Have you ever looked at the 17 handbook that was in effect before the sexual 18 misconduct policy became effective? 19 A. No. 20 Q. Since you became an 21 investigator and since they have a separate 22 sexual misconduct policy, have you ever looked 23 at the employee student handbook to look at 24 how they handle nonsexual claims raised by</p>

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<p style="text-align: right;">Page 82</p> <p>1 students?</p> <p>2 MS. ENGLE: Objection.</p> <p>3 MR. MYERS: You said "employee</p> <p>4 student handbook."</p> <p>5 MR. SCHWABENLAND: Thank you.</p> <p>6 Let me change that. Thank you.</p> <p>7 BY MR. SCHWABENLAND:</p> <p>8 Q. Since becoming an investigator</p> <p>9 under the sexual misconduct policy, both the</p> <p>10 interim, which became effective January of</p> <p>11 2015, and the subsequent one becoming</p> <p>12 effective in June of 2015, have you ever</p> <p>13 looked at the student handbook to evaluate how</p> <p>14 nonsexual claims raised by students against</p> <p>15 others are handled?</p> <p>16 A. I have not.</p> <p>17 Q. Is it your understanding that</p> <p>18 that's handled through Community Standards?</p> <p>19 A. Yes.</p> <p>20 Q. And is it your understanding</p> <p>21 that, at least orally, hearing that that's</p> <p>22 handled by the matter being submitted to a</p> <p>23 hearing officer, one or more?</p> <p>24 A. I think I've heard that over</p>	<p style="text-align: right;">Page 84</p> <p>1 under a sexual misconduct claim?</p> <p>2 A. That's where I'm sort of hazy</p> <p>3 on the dates. I don't believe that I did any</p> <p>4 sexual misconduct -- I mean, I can tell you</p> <p>5 for a fact, I did not do any sexual misconduct</p> <p>6 investigations until the format was changed to</p> <p>7 have us as the investigators.</p> <p>8 Q. Okay. What was the format that</p> <p>9 you followed, then, when you started to do the</p> <p>10 investigation?</p> <p>11 A. I followed the policy and the</p> <p>12 university gave me the headings, for lack of a</p> <p>13 better word, of what the report should</p> <p>14 contain.</p> <p>15 Q. Okay. When you said the</p> <p>16 university gave me the heading?</p> <p>17 A. You know what I mean, number</p> <p>18 one is complaint, number two is documents</p> <p>19 reviewed.</p> <p>20 Q. Policy?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Was that in writing that</p> <p>23 the university gave it to you --</p> <p>24 A. I don't think so.</p>
<p style="text-align: right;">Page 83</p> <p>1 the years.</p> <p>2 Q. But you never had a chance to</p> <p>3 evaluate that or to look at it?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. I'll go a little bit</p> <p>6 further. The sexual misconduct policy was</p> <p>7 revised in 2017. Did you play any part in the</p> <p>8 revision of that?</p> <p>9 A. No.</p> <p>10 Q. Are you familiar with the fact</p> <p>11 that it was revised in or about 2017?</p> <p>12 A. I believe so.</p> <p>13 Q. Okay. And then let me get back</p> <p>14 to, at this meeting what was your</p> <p>15 understanding as to how you were to conduct</p> <p>16 your role? What were you to do?</p> <p>17 A. There was no discussion of</p> <p>18 that.</p> <p>19 Q. Okay. Had --</p> <p>20 A. Other than what I have already</p> <p>21 told you, the logistics of how we would get</p> <p>22 the complaints, et cetera.</p> <p>23 Q. By the time you had this</p> <p>24 meeting had you conducted any investigations</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. -- as to how it should be</p> <p>2 formatted?</p> <p>3 A. I don't believe so.</p> <p>4 Q. So who told you how it should</p> <p>5 be formatted, how they wanted it?</p> <p>6 A. I don't remember.</p> <p>7 Q. All right.</p> <p>8 A. I believe it was from somebody</p> <p>9 in the Community Standards office, but I don't</p> <p>10 remember.</p> <p>11 Q. Okay. Did you ever see a</p> <p>12 manual that's maintained at the Community</p> <p>13 Standards office concerning the investigation</p> <p>14 and handling of claims?</p> <p>15 A. No.</p> <p>16 Q. Other than telling you the</p> <p>17 format of the headings on your report -- and</p> <p>18 that would include things such as claim, when</p> <p>19 it was made, how it came about, and then the</p> <p>20 policy and then how you carried out your</p> <p>21 investigation, what you reviewed, and who you</p> <p>22 interviewed and then your findings of fact and</p> <p>23 conclusions, which would include an assessment</p> <p>24 of credibility, did I give it generally?</p>

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<p style="text-align: right;">Page 86</p> <p>1 A. And summary of investigation, I</p> <p>2 believe is one of the headings.</p> <p>3 Q. That's the format you were</p> <p>4 referring to?</p> <p>5 A. Yes.</p> <p>6 Q. And other than that were you</p> <p>7 given any other guidelines by the university?</p> <p>8 A. I wouldn't call them</p> <p>9 guidelines. I was told students have an</p> <p>10 obligation to cooperate in an investigation,</p> <p>11 for example, you know, little things like</p> <p>12 that. If I needed student telephone numbers</p> <p>13 or emails, that Community Standards would give</p> <p>14 them to me, sort of logistical things.</p> <p>15 Q. I take it when you begin your</p> <p>16 investigation -- this is generically and I am</p> <p>17 sticking with sexual misconduct claims. When</p> <p>18 you begin your investigation you receive from</p> <p>19 the university a copy of the incident report?</p> <p>20 A. Yes.</p> <p>21 Q. And --</p> <p>22 A. If there is one.</p> <p>23 Q. If there is one. And would you</p> <p>24 receive a copy of the pre-investigative</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No.</p> <p>2 Q. So would the only way you would</p> <p>3 be aware of what the charges are against the</p> <p>4 individual would be based upon what, the</p> <p>5 incident report?</p> <p>6 A. It can be in various formats.</p> <p>7 It's typically -- I call it a complaint.</p> <p>8 Sounds like you're calling it an incident</p> <p>9 report. But sometimes it can come in as an</p> <p>10 email from Residence Life, for example. If</p> <p>11 something is reported to them in the middle of</p> <p>12 the night, I get that. I get that -- I call</p> <p>13 it complaint.</p> <p>14 Q. Okay.</p> <p>15 A. It could start at public</p> <p>16 safety. You know, I get that.</p> <p>17 Q. So I understand there is</p> <p>18 certain sources from the university, multiple</p> <p>19 sources that the complaint can come in to you,</p> <p>20 right?</p> <p>21 A. To Community Standards or Title</p> <p>22 IX.</p> <p>23 Q. Community Standards. I will</p> <p>24 take, for example, our case -- we'll get to</p>
<p style="text-align: right;">Page 87</p> <p>1 statement signed by both the claimant and the</p> <p>2 respondent?</p> <p>3 A. Yes.</p> <p>4 Q. Would you receive a notice</p> <p>5 letter of the charges against the respondent?</p> <p>6 A. I don't know what you're</p> <p>7 referring to.</p> <p>8 Q. Okay. A letter has to go out</p> <p>9 to a respondent saying "You are charged with"</p> <p>10 whatever, right?</p> <p>11 MR. MYERS: Is that a question</p> <p>12 or are you telling her what's in the</p> <p>13 thing that she said she doesn't know?</p> <p>14 MR. SCHWABENLAND: That's a</p> <p>15 question.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MR. SCHWABENLAND:</p> <p>18 Q. Okay.</p> <p>19 A. I'm not involved in it until it</p> <p>20 is on my plate for an investigation.</p> <p>21 Q. No. I understand. But when</p> <p>22 it's on your plate for an investigation do you</p> <p>23 receive a copy of -- I'll call it the charge</p> <p>24 letter?</p>	<p style="text-align: right;">Page 89</p> <p>1 our case -- involving John Doe and Jane Roe,</p> <p>2 that came in through Dr. Perry's report about</p> <p>3 her meeting with Jane Roe; is that your</p> <p>4 understanding?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And I should ask you</p> <p>7 this -- I am digressing here one second. What</p> <p>8 records have you reviewed in preparation for</p> <p>9 this deposition?</p> <p>10 A. I have reviewed my file, which</p> <p>11 is the long report, the short report, my</p> <p>12 notes, text message from John, text messages</p> <p>13 from Jane, the complaint, so, you know, my</p> <p>14 file, my reports, my appendix, my handwritten</p> <p>15 notes.</p> <p>16 Q. Okay. The complaint, then,</p> <p>17 would be the one authored by Dr. Perry; is</p> <p>18 this correct?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if you received any</p> <p>21 incident report from public safety in this</p> <p>22 case?</p> <p>23 A. I did not.</p> <p>24 Q. So when the report comes in to</p>

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<p style="text-align: right;">Page 90</p> <p>1 you, whatever it is, a claim -- I'll call it</p> <p>2 the complaint. When the complaint comes in to</p> <p>3 you from whatever source, your job, then, is</p> <p>4 to what?</p> <p>5 A. Conduct the investigation.</p> <p>6 Q. And how do you go about doing</p> <p>7 that?</p> <p>8 A. Generally, I get from Community</p> <p>9 Standards contact information for the</p> <p>10 complainant and the respondent.</p> <p>11 Q. Okay.</p> <p>12 A. I generally reach out to them</p> <p>13 both by email. I generally interview the</p> <p>14 complainant first and then I go from there.</p> <p>15 Q. And am I correct that you may</p> <p>16 also interview the respondent on the same day</p> <p>17 or you may see the respondent at another day?</p> <p>18 A. It totally depends on their</p> <p>19 schedules, but, yes.</p> <p>20 Q. At least by the time you reach</p> <p>21 out to them you have a copy of whatever the</p> <p>22 complaint is?</p> <p>23 A. Correct.</p> <p>24 Q. And do you give them a copy of</p>	<p style="text-align: right;">Page 92</p> <p>1 complaint?</p> <p>2 A. Yes.</p> <p>3 Q. And is that written down</p> <p>4 anyplace?</p> <p>5 A. I don't -- not that I know of.</p> <p>6 Q. Do you recall in this case, you</p> <p>7 know, the one we are here about, showing the</p> <p>8 complaint to John Doe?</p> <p>9 A. I do not recall doing that.</p> <p>10 Q. And is there some reason why</p> <p>11 you didn't show it to him in this case?</p> <p>12 A. I told him what the complaint</p> <p>13 said. My recollection of not showing it to</p> <p>14 him is because it was a specific charge.</p> <p>15 Sometimes I get very long complaints, very</p> <p>16 long emails from Residence Life with a lot of</p> <p>17 details in them.</p> <p>18 Q. When you say it was a specific</p> <p>19 charge, what was the specific charge?</p> <p>20 A. The charge was that they had</p> <p>21 mutually engaged in some kissing and that then</p> <p>22 the complainant charged him with squeezing her</p> <p>23 neck to the point where she was afraid and</p> <p>24 texted one of her friends to come get her.</p>
<p style="text-align: right;">Page 91</p> <p>1 that complaint?</p> <p>2 A. Generally -- no, I would never</p> <p>3 give it to them to keep.</p> <p>4 Q. Would you allow them to look at</p> <p>5 it?</p> <p>6 A. I sometimes do.</p> <p>7 Q. In our case did you allow the</p> <p>8 complainant, who is Jane Roe, to look at the</p> <p>9 complaint?</p> <p>10 A. I don't remember.</p> <p>11 Q. If she had asked to look at it</p> <p>12 would you have allowed her to look at it?</p> <p>13 A. Yes. Dr. Perry shows it to</p> <p>14 them.</p> <p>15 Q. Dr. Perry?</p> <p>16 A. Yes.</p> <p>17 Q. And how do you know that?</p> <p>18 A. She has told that to me on</p> <p>19 numerous occasions.</p> <p>20 Q. Did Dr. Perry tell you that she</p> <p>21 showed it to them in this case specifically?</p> <p>22 A. Not that I remember.</p> <p>23 Q. But your understanding is that</p> <p>24 Dr. Perry shows each of them a copy of the</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Okay. And when you met with</p> <p>2 him you told him about that?</p> <p>3 A. Yes.</p> <p>4 Q. Did you tell him about that</p> <p>5 specific charge before you met with him?</p> <p>6 A. No.</p> <p>7 Q. I know you sent emails about</p> <p>8 availability and stuff. Did you speak with</p> <p>9 him over the telephone at all beforehand?</p> <p>10 A. I don't believe so. I know</p> <p>11 they were leaving on spring break. I do not</p> <p>12 recall speaking with John or Jane.</p> <p>13 Q. Do you recall if John had asked</p> <p>14 you by text or email beforehand if he should</p> <p>15 review or if he should bring anything with him</p> <p>16 in preparation?</p> <p>17 A. I think he may have emailed me</p> <p>18 what should he do to prepare for the meeting,</p> <p>19 something like that.</p> <p>20 Q. What did you respond?</p> <p>21 A. I think I told him to bring any</p> <p>22 notes or texts that he wanted to share with</p> <p>23 me.</p> <p>24 Q. Up until the time you actually</p>

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<p style="text-align: right;">Page 94</p> <p>1 met with him had your emails told him what he 2 potentially violated? 3 A. No. 4 Q. So was it your understanding he 5 was coming in cold as to what the specifics of 6 the allegations were? 7 A. He had already met with 8 Community Standards, because I don't get it 9 until those pre-investigation meetings are 10 done. 11 Q. I know, but what did you expect 12 Community Standards to tell him? 13 A. I am not involved in that 14 process. My understanding was they are told 15 about the complaint. 16 Q. What about the complaint? 17 A. The allegations. 18 Q. The specifics, that there was 19 mutually agreed upon kissing and that at some 20 point he squeezed her neck? 21 A. I am not involved in those 22 meetings. I don't know. 23 Q. I don't mean to be 24 argumentative, but I am just -- do you have</p>	<p style="text-align: right;">Page 96</p> <p>1 Community Standards would do if either party 2 asked to review a copy of the complaint? 3 A. I do not know. 4 Q. And do you have any knowledge 5 as to whether or not John Doe asked Community 6 Standards at the pre-investigative meeting to 7 see a copy of the complaint? 8 A. I don't know one way or the 9 other. 10 Q. Was there any reason that 11 you're aware of not to disclose that if a 12 student asks for that? 13 MR. MYERS: Objection. Do you 14 mean disclose what's in the complaint 15 or show the complaint? 16 MR. SCHWABENLAND: To allow him 17 to review the complaint. 18 THE WITNESS: I don't know. 19 BY MR. SCHWABENLAND: 20 Q. Did you ever have conversations 21 with Community Standards, anybody there, or 22 Dr. Perry or Dr. Anderson or anybody at the 23 university about what you should show a 24 complainant or a respondent when you do your</p>
<p style="text-align: right;">Page 95</p> <p>1 any idea as to what John Doe was told about 2 anything to do with the complaint? 3 A. I wasn't at that meeting. I 4 know when I told him what the allegations were 5 he said that he was told by Community 6 Standards that he had been too rough with her. 7 I remember that being his answer. I don't 8 know what he was told, though. 9 Q. Do you know who he met with at 10 Community Standards? 11 A. The forms would show that. I 12 don't recall. 13 Q. I'll represent to you he met 14 with Emily Forte. But would you have received 15 a copy of the checklist that's done at the 16 meeting with Community Standards? 17 A. I usually do. 18 Q. And that would be both the 19 checklist for the complainant and the 20 respondent? 21 A. Yes. 22 Q. Did you have any 23 understanding -- I am talking about this case. 24 Did you have any understanding as to what</p>	<p style="text-align: right;">Page 97</p> <p>1 investigation at the time of the meeting? 2 A. No. 3 Q. So is that primarily up to you 4 to decide how you were to handle that? 5 A. Yes. 6 Q. Had you ever made a 7 recommendation to the university that certain 8 protocols should be in place as to what to 9 allow a complainant or respondent to see 10 before the meeting or during the meeting? 11 A. No. 12 Q. I am digressing backwards here. 13 Are you familiar with the Harris case, Harris 14 versus St. Joe's University? 15 A. I don't believe so. If that's 16 one I investigated, if you tell me more about 17 it, but the name doesn't ring a bell to me at 18 all. 19 Q. Are you familiar with the case 20 law on the Harris case, the case law -- the 21 opinion that was issued by the Court? 22 A. No. 23 Q. How about, are you familiar 24 with the Powell case versus St. Joe's</p>

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<p style="text-align: right;">Page 98</p> <p>1 University?</p> <p>2 A. I know a little bit about that.</p> <p>3 Q. What do you know?</p> <p>4 A. I know that one of my</p> <p>5 colleagues at Buchanan was the investigator</p> <p>6 and that Mr. Powell brought a pro se</p> <p>7 complaint, which I probably read. I don't</p> <p>8 remember the details.</p> <p>9 Q. Okay. Other than that do you</p> <p>10 know anything else?</p> <p>11 A. No. I was not the</p> <p>12 investigator. I think it was a stalking case.</p> <p>13 I never read the report or anything.</p> <p>14 Q. Let me ask you about the case</p> <p>15 involving -- there is two Jane Does, Jane Doe</p> <p>16 1 and Jane Doe 2 -- involving the girls'</p> <p>17 softball team. Are you familiar with those</p> <p>18 claims and the investigation?</p> <p>19 A. The investigations I did, yes.</p> <p>20 Q. Yes. Okay. So what</p> <p>21 investigations did you do?</p> <p>22 A. This was a while ago. I don't</p> <p>23 remember all the details. It had a lot to it</p> <p>24 that didn't involve me, is my recollection.</p>	<p style="text-align: right;">Page 100</p> <p>1 THE WITNESS: Right. The only</p> <p>2 thing I remember is I sort of remember</p> <p>3 seeing something in the paper. I did</p> <p>4 not learn anything from St. Joe's. I</p> <p>5 sort of remember seeing something in</p> <p>6 the paper that there were charges</p> <p>7 substantiated or something like that.</p> <p>8 BY MR. SCHWABENLAND:</p> <p>9 Q. Did you learn that the team was</p> <p>10 suspended for the rest of the 2015 season?</p> <p>11 A. That may have been what I saw</p> <p>12 in the paper.</p> <p>13 Q. Did you know that they were</p> <p>14 placed on disciplinary probation through</p> <p>15 May 31, 2016?</p> <p>16 MR. MYERS: Are you asking for</p> <p>17 her personal knowledge or are you</p> <p>18 asking her to remember what she read</p> <p>19 in the newspaper?</p> <p>20 BY MR. SCHWABENLAND:</p> <p>21 Q. Anything, either personal</p> <p>22 knowledge or knowledge you gleaned from the</p> <p>23 paper.</p> <p>24 A. I did not speak to anybody at</p>
<p style="text-align: right;">Page 99</p> <p>1 But two female softball players made a number</p> <p>2 of allegations against the university and</p> <p>3 other members of the softball team. Some of</p> <p>4 them potentially involved sexual misconduct</p> <p>5 and I was asked to investigate that. I</p> <p>6 believe there was some other process going on</p> <p>7 around the same time with nonsexual misconduct</p> <p>8 allegations.</p> <p>9 Q. And that was handled by</p> <p>10 Community Standards?</p> <p>11 A. As far as I know. I don't know</p> <p>12 who else might have been involved.</p> <p>13 Q. Did you ever speak with Mr.</p> <p>14 Bordak about his handling of it?</p> <p>15 A. No.</p> <p>16 Q. Do you know what findings were</p> <p>17 made by Community Standards against the</p> <p>18 softball team?</p> <p>19 A. My investigation or the rest of</p> <p>20 Community Standards?</p> <p>21 Q. The Community Standards.</p> <p>22 MR. MYERS: He's asking what</p> <p>23 you know about, not your</p> <p>24 investigation.</p>	<p style="text-align: right;">Page 101</p> <p>1 the university about it. I don't remember</p> <p>2 hearing what you just said.</p> <p>3 Q. Community Standards was</p> <p>4 handling the nonsexual aspects of the claim</p> <p>5 raised by these two students, right?</p> <p>6 A. Yes.</p> <p>7 Q. And that would include</p> <p>8 harassment or hazing issues?</p> <p>9 A. That's my understanding, that</p> <p>10 they were hazing-type allegations.</p> <p>11 Q. When you began your</p> <p>12 investigation, because a certain aspect was</p> <p>13 assigned to investigate possible sexual</p> <p>14 misconduct violations, right?</p> <p>15 A. Yes.</p> <p>16 Q. When that was assigned by</p> <p>17 you --</p> <p>18 A. Assigned to me.</p> <p>19 Q. Assigned to you. Thank you.</p> <p>20 When that was assigned to you, who assigned</p> <p>21 it? Do you know? Was it Dr. Perry? Was it</p> <p>22 Mr. Bordak or --</p> <p>23 A. My best recollection is that it</p> <p>24 was Bill Bordak.</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q. And did you have a discussion 2 as to the plan, that at least he represented 3 he was going to handle this aspect and you 4 would handle the sexual misconduct aspect? 5 A. I don't remember that. I knew 6 my task was to handle the sexual misconduct 7 investigation, because I investigate under the 8 sexual misconduct policy. And, to be fair, I 9 knew that there were other allegations as 10 well. I did not have a discussion with Mr. 11 Bordak as to what happened to the other stuff. 12 Q. Do you know what the nature of 13 the sexual allegations were that you handled? 14 A. I have not looked at this 15 report since I concluded it. I do remember 16 there were a couple, maybe two or three, and 17 the one that I remember was at some sort of, I 18 don't know -- party is probably the wrong 19 word -- but at something at an off-campus 20 house the two complainants alleged that they 21 were asked to demonstrate sexual positions 22 that were listed in Cosmopolitan magazine, or 23 maybe that all of them -- all of them were 24 asked to do that. That's the one I remember.</p>	<p style="text-align: right;">Page 104</p> <p>1 on the team -- I did my best to meet everybody 2 on the team other than the two complainants. 3 Q. At least in the complaint -- 4 A. Can I supplement a prior 5 answer? 6 Q. Sure. 7 A. There had been a loss -- public 8 safety investigation, some part of it started 9 at public safety and public safety had 10 interviewed, I believe, both complainants. I 11 had public safety's notes as well. 12 Q. The allegations, at least in 13 the complaint, would you agree with me that 14 some of these allegations were sexual in 15 nature? 16 A. Yes. I think they were the 17 ones I was investigating. 18 Q. The claim was sexual assault, 19 right? 20 A. I don't remember that. 21 Q. One of the allegations was that 22 the complainants were claiming that students 23 were touching their bare buttocks. Do you 24 recall that?</p>
<p style="text-align: right;">Page 103</p> <p>1 I do believe there was at least one sexual 2 connotation that I was investigating. 3 Q. Did you meet with the two 4 complainants? 5 A. I did not. 6 Q. Is there some reason why you 7 did not? 8 A. I tried to meet with them. 9 They had counsel, who I talked to a couple of 10 times, and he did not make his clients 11 available to be interviewed. 12 Q. And did you know what the 13 allegations by the complainants were at the 14 time? 15 A. There was a complaint, like, a 16 drafted Eastern District of Pennsylvania 17 complaint, that I saw. I don't know when I 18 saw it whether it was, like, a courtesy copy 19 or it had actually been filed, but I was 20 working off something that looked like a 21 lawsuit complaint. 22 Q. So did you meet with the 23 respondents, I will call them? 24 A. I believe I met with everybody</p>	<p style="text-align: right;">Page 105</p> <p>1 A. I don't recall that. It could 2 be true. I just don't recall it. 3 Q. I understand. Let me go 4 through the list here. The allegations 5 involve the plaintiffs were forced to hump up 6 against the wall or give lap dances. Do you 7 recall that? 8 A. Yes. 9 Q. Would that be sexual in nature? 10 A. Yes. 11 Q. I'm sorry to go through this, 12 but I have to. That they were forced to 13 give -- or that the allegation was that they 14 were compelled or forced some way to give 15 over-the-pants hand jobs? 16 A. Yes. 17 Q. Another allegation, to dance to 18 sexually explicit songs? 19 A. Yes. 20 Q. That they were forced to 21 demonstrate the coach's orgasm a certain way? 22 A. Yes. 23 Q. That they were forced to put 24 condoms on bananas?</p>

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<p style="text-align: right;">Page 106</p> <p>1 A. Yes.</p> <p>2 Q. That they were to, in front of</p> <p>3 others, to initiate oral sex on wine bottles?</p> <p>4 A. Yes.</p> <p>5 Q. That they were forced to or</p> <p>6 compelled to answer questions about sexual</p> <p>7 identity?</p> <p>8 A. I don't specifically remember</p> <p>9 that.</p> <p>10 Q. Fair enough. That they were</p> <p>11 compelled to discuss sexual positions and</p> <p>12 pornography?</p> <p>13 A. Yes. That's the one I</p> <p>14 remember, the Cosmopolitan magazine.</p> <p>15 Q. And some nickname was given,</p> <p>16 Dirty Sanchez or something like that?</p> <p>17 A. I recall that.</p> <p>18 Q. Which is not a nice nickname, I</p> <p>19 guess?</p> <p>20 A. That was the connotation, yes.</p> <p>21 Q. I know you had a difficult time</p> <p>22 speaking with the complainants because they</p> <p>23 already had an attorney and it was now in</p> <p>24 suit; is that correct?</p>	<p style="text-align: right;">Page 108</p> <p>1 through email.</p> <p>2 Q. Did you make a finding at least</p> <p>3 that some of the allegations were true, that</p> <p>4 they did have their buttocks touched, bare</p> <p>5 buttocks?</p> <p>6 A. I don't remember. If you</p> <p>7 showed me the report I can recall that. I</p> <p>8 know I did address the allegations.</p> <p>9 Q. But if that were true that</p> <p>10 would be sexual assault, would it not?</p> <p>11 MR. MYERS: I object to the</p> <p>12 form of the question. You can answer</p> <p>13 the question.</p> <p>14 THE WITNESS: I don't know. If</p> <p>15 you show me the report, I can comment</p> <p>16 on it.</p> <p>17 BY MR. SCHWABENLAND:</p> <p>18 Q. I will get it out. I am not</p> <p>19 going to do it now, because I have to go</p> <p>20 through some things here. I want to go</p> <p>21 through one other thing and then get back to</p> <p>22 our case, if I may.</p> <p>23 A. Okay.</p> <p>24 MR. MYERS: It's 12:20. What</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I believe it was in suit in</p> <p>2 some form.</p> <p>3 Q. You also weren't able to talk</p> <p>4 to all the people on the softball team, right?</p> <p>5 A. I don't remember. I know I</p> <p>6 talked to a lot of people. I very well may</p> <p>7 not have talked to all of them.</p> <p>8 Q. Some of the girls were in</p> <p>9 Europe or Japan at the time?</p> <p>10 A. Yes.</p> <p>11 Q. And they couldn't speak by</p> <p>12 phone but offered to communicate by email?</p> <p>13 A. I don't remember that.</p> <p>14 Q. Okay. But there's some</p> <p>15 indication that you didn't want to handle it</p> <p>16 by email. So you didn't talk to them. Do you</p> <p>17 recall that?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you recall having an</p> <p>20 aversion to getting any type of email from any</p> <p>21 of the people that you wanted to talk to?</p> <p>22 A. It has been my experience that</p> <p>23 students forward lots of emails. So my</p> <p>24 preference is not to conduct investigations</p>	<p style="text-align: right;">Page 109</p> <p>1 is your plan for lunch?</p> <p>2 MR. SCHWABENLAND: Take 30</p> <p>3 minutes. Is that okay?</p> <p>4 MR. MYERS: Whatever you want.</p> <p>5 Whenever you want.</p> <p>6 MR. SCHWABENLAND: Well, let's</p> <p>7 do it now. Is that okay?</p> <p>8 THE WITNESS: Sure.</p> <p>9</p> <p>10 (Whereupon, a lunch recess was</p> <p>11 held from 12:16 p.m. to 12:50 p.m.)</p> <p>12</p> <p>13 BY MR. SCHWABENLAND:</p> <p>14 Q. Welcome back from lunch.</p> <p>15 A. Thank you, sir.</p> <p>16 Q. I am going to jump around and</p> <p>17 then get back to this case. You mentioned Dr.</p> <p>18 Perry has told you that she shows or allows</p> <p>19 the parties, complainant, respondent to see</p> <p>20 the complaint; is that correct?</p> <p>21 A. Yes, but I've also heard it</p> <p>22 from students. So if I have shown a copy of</p> <p>23 the complaint to students they say, "Oh, yes,</p> <p>24 I've seen that." And at least once I've seen</p>

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<p style="text-align: right;">Page 110</p> <p>1 a complaint where the student, like, corrected 2 things in handwriting, so when I got it it had 3 extra comments on it. So from all those 4 reasons I'm aware that Dr. Perry let's the 5 student see the complaint. 6 Q. So there have been cases where 7 you, as the investigator, when you're meeting 8 with the student for the first time would show 9 a complaint to them and they can comment? 10 A. Yes. I believe I told you 11 that. Yes. 12 Q. And under what circumstances 13 would you do that? 14 A. Usually if it is a long, long 15 complaint with a lot of elements to it. 16 Q. I'm sorry. You did say that. 17 A. Yes. I often use that as sort 18 of a format for our discussion. 19 Q. Any other reason to show it to 20 them? 21 A. Not that I can think of. 22 Q. Okay. But Dr. Perry has told 23 you on more than one occasion that she too has 24 allowed students to review the complaint?</p>	<p style="text-align: right;">Page 112</p> <p>1 indicated to you that they have shown the 2 respondent a copy of the complaint? 3 A. I've never had that discussion 4 with them one way or the other. 5 Q. So is it your understanding 6 that the respondent really never sees the 7 complaint? 8 A. I don't know. 9 Q. Well, do you know of any case 10 that you've handled where the respondent had 11 the ability to review the complaint prior to 12 meeting with you, the investigator? 13 A. I don't know. I'm not aware of 14 any, but I don't know. 15 Q. Did you ever raise the fact 16 that the complainant has the ability to review 17 the complaint before actually meeting with you 18 and the respondent doesn't have the ability to 19 review the complaint? 20 A. I don't know if that's true, 21 but I've never raised it with Community 22 Standards. 23 Q. Dr. Perry is the Title IX 24 coordinator, right?</p>
<p style="text-align: right;">Page 111</p> <p>1 A. That's my recollection, yes. 2 Q. And that would be at a time 3 before the meeting with you, the investigator, 4 right? 5 A. Yes. 6 Q. Would you agree that if that's 7 done, that is, the student have an opportunity 8 to see a copy of the complaint beforehand, 9 that gives them a better understanding as to 10 what they are charged with before actually 11 meeting with you? 12 A. No. I think you're 13 misunderstanding me. I meant that Dr. Perry 14 has shown the complainant the complaint, 15 because the complainants have told me that 16 they have seen it before or that they made 17 corrections to it. So my testimony goes to 18 the complainant seeing the complaint, not the 19 respondent. 20 Q. So has Dr. Perry ever said she 21 has shown the respondent the copy of the 22 complaint? 23 A. Not to me. 24 Q. So has Community Standards</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Yes. 2 Q. And what is your understanding 3 as to what a Title IX coordinator does? 4 A. I think she's universally 5 regarded as the point person, although not 6 solely, for Title IX complaints. I believe 7 she does some education on campus about the 8 policy and in at least some circumstances she 9 meets with a complainant to determine whether 10 the allegations are something that could or 11 should be investigated under the sexual 12 misconduct policy and things like that. 13 Q. Okay. 14 A. I am sure she does things that 15 I don't know of. 16 Q. Do you play any role as to 17 whether or not a complaint should be placed in 18 the sexual misconduct policy or a nonsexual 19 Community Standards? 20 A. I do not. Once it's on my 21 plate it is a sexual misconduct investigation. 22 Q. Would it be fair to say that 23 you haven't seen anything in writing involving 24 a protocol as to whether a respondent should</p>

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<p style="text-align: right;">Page 114</p> <p>1 have access to reviewing the complaint before 2 actually meeting with you and the 3 investigator? 4 A. Correct. I've never seen 5 anything. 6 Q. And that's never been a subject 7 of discussion by you or when you're at a 8 meeting with anybody at St. Joe's? 9 A. Correct. 10 Q. Ms. Forte, do you know Ms. 11 Forte? 12 A. Yes. 13 Q. And she was deposed and she 14 indicated that when she met with John Doe in 15 this case he asked her to see a copy of the 16 complaint and she said, "No. That copy will 17 be provided to you when you meet with Ms. 18 Malloy." That's what she testified to in her 19 deposition. She indicated that Ms. Malloy 20 routinely shows a copy of the complaint to the 21 respondents. Is that true or not? 22 MR. MYERS: Object to the form 23 of the question. 24 MS. SCHIMELFENIG: And I know</p>	<p style="text-align: right;">Page 116</p> <p>1 Exhibit-2 -- I'm sorry. Is that Exhibit-1 or 2 2? 3 A. One. 4 Q. In Exhibit-1, can you point to 5 any case where you actually showed the 6 respondent a copy of the complaint? 7 A. I have no idea what these 8 complaints are. 9 Q. If you showed a respondent a 10 copy of the complaint would your summary then 11 so reflect? 12 A. I don't know. Not necessarily. 13 Q. Can you estimate for me how 14 many times you have shown a respondent in a 15 sexual misconduct policy case at St. Joe's 16 University a copy of the complaint? 17 A. I have no idea. 18 Q. Would it be more than five or 19 less than five? 20 A. I have no idea. Let me 21 rephrase that. It's probably more than five, 22 but I have no ability to put any parameters on 23 it. 24 Q. More than ten, less than ten?</p>
<p style="text-align: right;">Page 115</p> <p>1 John wasn't at the depo. I was at 2 Emily's depo and I am not exactly sure 3 that's exactly what she said. 4 MR. MYERS: So if you are going 5 to question her about a question at 6 the deposition, I think, in fairness 7 to the deponent, you need to show her 8 the question and answer or at least 9 show me the question and answer. 10 MR. SCHWABENLAND: I don't want 11 to waste time with getting all this 12 stuff out. 13 MR. MYERS: Okay. I am not 14 sure it's a waste of time, but it's 15 your call. 16 BY MR. SCHWABENLAND: 17 Q. I am representing to you that's 18 what she said. All I'm asking you is: Do you 19 routinely show respondents a copy of the 20 complaint? 21 A. I think I've answered that a 22 couple of times. I wouldn't say routinely, 23 but I do. 24 Q. In the list of cases in</p>	<p style="text-align: right;">Page 117</p> <p>1 A. I don't know. 2 Q. And why do you say probably 3 more than five? 4 A. Five just sounds like a small 5 number. 6 Q. Okay. 7 A. And many of these complaints 8 are very complicated, that come with long 9 emails from Residence Life and stuff like 10 that. I go back to whether it's something 11 finite that I can explain to somebody or 12 whether they need to see all the details. 13 Q. Jumping back a second here. Up 14 to the present you've had no training in law 15 enforcement; is that correct? 16 A. Yes, that is correct. 17 Q. You have had no training as a 18 prosecutor or defense attorney in a criminal 19 case? 20 A. That's correct. 21 Q. Have you ever represented 22 anybody in a criminal case? 23 A. Not that I know of. I mean, 24 I've never represented anybody in a criminal</p>

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<p style="text-align: right;">Page 118</p> <p>1 case.</p> <p>2 Q. Have you ever represented</p> <p>3 anybody in a Civil Rights case?</p> <p>4 A. Like a plaintiff? I mean, all</p> <p>5 employment law is Civil Rights and I've always</p> <p>6 represented the employer.</p> <p>7 Q. Okay. Over the last five</p> <p>8 years, have you published any articles on</p> <p>9 Title IX violations involving sexual</p> <p>10 misconduct claims in a university or college</p> <p>11 setting?</p> <p>12 A. No.</p> <p>13 Q. Have you done any presentations</p> <p>14 for the same subject matter over the last so</p> <p>15 many years?</p> <p>16 A. No.</p> <p>17 Q. Do you consider yourself an</p> <p>18 expert in the area of Title IX violations</p> <p>19 involving sexual misconduct claims in a</p> <p>20 college or university setting?</p> <p>21 A. Yes. I consider myself a</p> <p>22 well-informed practitioner in that area.</p> <p>23 Q. And the basis of that is what?</p> <p>24 A. My training, education, and</p>	<p style="text-align: right;">Page 120</p> <p>1 regularly.</p> <p>2 Q. But you don't read anything</p> <p>3 from ATIXA?</p> <p>4 A. I do not.</p> <p>5 Q. Is there some reason why you</p> <p>6 don't?</p> <p>7 A. I can't attribute any reason to</p> <p>8 that. I don't know.</p> <p>9 Q. Have you heard others mention</p> <p>10 that ATIXA provides good, solid guidelines for</p> <p>11 Title IX issues involving sexual misconduct</p> <p>12 cases or claims in the university setting?</p> <p>13 A. I have not heard that.</p> <p>14 Q. Do you know any other attorneys</p> <p>15 that have taken courses with ATIXA?</p> <p>16 A. Not that I am aware of.</p> <p>17 Q. So, again, you mentioned that</p> <p>18 NACUA -- what is that again?</p> <p>19 A. NACUA.</p> <p>20 Q. And are you a member of that</p> <p>21 organization?</p> <p>22 A. I am not.</p> <p>23 Q. And so how often do you receive</p> <p>24 material from them?</p>
<p style="text-align: right;">Page 119</p> <p>1 experience.</p> <p>2 Q. Okay. But what training</p> <p>3 specifically in that area are you referring</p> <p>4 to? I know you said you went to Villanova and</p> <p>5 you took -- for a seminar that day and you</p> <p>6 took a web -- what is it called?</p> <p>7 A. Webinars, plural.</p> <p>8 Q. At various times throughout the</p> <p>9 years, right? And you also mentioned a group</p> <p>10 that gave a presentation. What is the name of</p> <p>11 that group again? It starts with an N?</p> <p>12 A. I read heavily materials in</p> <p>13 this area and I had told you that I read the</p> <p>14 course materials from NACUA, National</p> <p>15 Association of College and University</p> <p>16 Attorneys. I read the Dear Colleague Letters.</p> <p>17 Like every lawyer, I keep up on areas of law</p> <p>18 in which I practice.</p> <p>19 Q. Other than the coursework and</p> <p>20 NACUA and the Dear Colleague Letter do you</p> <p>21 read any other materials?</p> <p>22 A. Yes.</p> <p>23 Q. What do you read?</p> <p>24 A. I get emails and materials</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Every year.</p> <p>2 Q. And is that once a year? Do</p> <p>3 they put it out monthly? What do they do?</p> <p>4 A. It's at least once a year and</p> <p>5 can be more frequently.</p> <p>6 Q. Any other coursework other than</p> <p>7 that?</p> <p>8 A. Not that I can think of</p> <p>9 specifically.</p> <p>10 Q. When you started to act as an</p> <p>11 investigator at St. Joe's University, did you</p> <p>12 review any material, any educational material</p> <p>13 that's presented to students, so you know what</p> <p>14 it is, involving Title IX or sexual misconduct</p> <p>15 violations?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Have you ever heard a case</p> <p>18 Breaking the Silence?</p> <p>19 A. No.</p> <p>20 Q. I'm sorry. Not the case. Have</p> <p>21 you ever heard the presentation by the</p> <p>22 university about Breaking the Silence?</p> <p>23 A. No.</p> <p>24 Q. Do you know any educational</p>

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<p style="text-align: right;">Page 122</p> <p>1 material that is shown to students?</p> <p>2 A. I know they do education. I've</p> <p>3 never seen any of it.</p> <p>4 Q. And you haven't done any</p> <p>5 presentation yourself to students?</p> <p>6 A. Correct.</p> <p>7 Q. By the way, in that Exhibit-1</p> <p>8 it shows that you investigated two females and</p> <p>9 found them not responsible. Are those the two</p> <p>10 females that were involved in softball, in the</p> <p>11 girls' softball team?</p> <p>12 A. I don't know.</p> <p>13 Q. Have you investigated --</p> <p>14 A. They could be. I just don't</p> <p>15 know.</p> <p>16 Q. I understand. Have you</p> <p>17 investigated any other females that you can</p> <p>18 recall?</p> <p>19 A. Female respondent?</p> <p>20 Q. Respondent.</p> <p>21 A. Not that I recall off the top</p> <p>22 of my head.</p> <p>23 Q. Have you ever found a female</p> <p>24 responsible, a female respondent?</p>	<p style="text-align: right;">Page 124</p> <p>1 (Whereupon, Exhibits Malloy-3</p> <p>2 and 4 were marked for purposes of</p> <p>3 identification.)</p> <p>4</p> <p>5 BY MR. SCHWABENLAND:</p> <p>6 Q. Let me ask you to look at</p> <p>7 Exhibit-3, which is Bates stamped 1030. It</p> <p>8 defines, at least what's presented to</p> <p>9 students, "Sexual assault is defined as" and</p> <p>10 it is saying "Sexual contact without consent</p> <p>11 occurs when the act is intentional and is</p> <p>12 committed either by:" and then four different</p> <p>13 bullet points. The first bullet point:</p> <p>14 Force, violence, threat or intimidation; the</p> <p>15 second, ignoring the objections of the other</p> <p>16 person; third, causing another's intoxication</p> <p>17 or impairment through the use of drugs or</p> <p>18 alcohol; four, taking advantage of another</p> <p>19 person's incapacitation, state of</p> <p>20 intimidation, helplessness or other inability</p> <p>21 to consent. First of all, did I read that</p> <p>22 correctly?</p> <p>23 A. I wasn't following you that</p> <p>24 closely, so I can't answer that question.</p>
<p style="text-align: right;">Page 123</p> <p>1 A. In sexual misconduct</p> <p>2 complaints?</p> <p>3 Q. Yes.</p> <p>4 A. I think I told you, I don't</p> <p>5 have any specific recollection of</p> <p>6 investigating with a female respondent. It's</p> <p>7 possible.</p> <p>8 Q. Okay. Let me show you what's</p> <p>9 been produced by St. Joe's University, 1030.</p> <p>10 I will represent to you, that's a slide from</p> <p>11 the presentation of Breaking the Silence</p> <p>12 that's presented to the students -- the</p> <p>13 freshmen.</p> <p>14 MR. MYERS: Are you going to</p> <p>15 mark this as 3? You're going to mark</p> <p>16 it as 3?</p> <p>17 MR. SCHWABENLAND: You want it</p> <p>18 marked?</p> <p>19 MR. MYERS: If you're</p> <p>20 questioning the witness about it, I</p> <p>21 want it marked, yes.</p> <p>22 MR. SCHWABENLAND: Okay. Mark</p> <p>23 it.</p> <p>24</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Okay. Do you agree with that</p> <p>2 definition?</p> <p>3 MR. MYERS: I object to the</p> <p>4 form of the question. You're asking</p> <p>5 her about a slide that she says she</p> <p>6 never saw. If you --</p> <p>7 MR. SCHWABENLAND: I am showing</p> <p>8 it to her now.</p> <p>9 BY MR. SCHWABENLAND:</p> <p>10 Q. Do you agree with that</p> <p>11 definition?</p> <p>12 MR. MYERS: Let me finish. If</p> <p>13 you represent to her that this is</p> <p>14 verbatim from the sexual misconduct</p> <p>15 policy, that's one thing. If it is</p> <p>16 anything else, I object to the form of</p> <p>17 the question.</p> <p>18 BY MR. SCHWABENLAND:</p> <p>19 Q. Can you answer my question?</p> <p>20 A. I cannot answer your question</p> <p>21 without comparing it to the policy. I've</p> <p>22 never seen this slide before and I apply the</p> <p>23 definition of consent from the policy, which I</p> <p>24 think is much longer than this.</p>

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<p style="text-align: right;">Page 126</p> <p>1 Q. Okay. I'll get to that. Look 2 at the next one, Exhibit-4, 1031. There is a 3 question at the top saying, "Myth or Fact, 4 False reports of rape or sexual assault are 5 common and happen often." And underneath 6 there it's cited in red letters, "Myth" and 7 then it goes on to state, "False reports of 8 sexual assault are rare, occurring only 9 8 percent of the time, according to the FBI." 10 It's a cite to the Federal Bureau of 11 Investigation Uniform Crimes Reports, 12 Washington, D.C. Do you agree with that 13 statement? 14 A. I have no ability to agree with 15 it or disagree. I've never read the uniform 16 crime reports. I don't know. 17 Q. Have you ever read any reports 18 about false reporting by claimants, how often 19 that has occurred or is suspected of 20 occurring? 21 A. I don't recall that. 22 Q. When you interview a claimant 23 do you take what they say at face value or do 24 you anticipate that they may be falsely</p>	<p style="text-align: right;">Page 128</p> <p>1 --- 2 (Off the record) 3 --- 4 MR. MYERS: If you are going to 5 question in detail on each we are 6 going to need multiple copies, that 7 is, I am going to need one to be able 8 to follow along. 9 MR. SCHWABENLAND: I'm sorry. 10 Say that again. 11 MR. MYERS: Do you have more 12 than one copy of the things that 13 you're about to question her about in 14 detail? 15 MR. SCHWABENLAND: I don't. 16 That's why I said to Al that we need 17 to do it at my office so we can make 18 copies. 19 MR. MYERS: But we are not at 20 your office. So give me the things 21 and I will get them copied. 22 MR. SCHWABENLAND: Okay. 23 --- 24 (Whereupon, a recess was held</p>
<p style="text-align: right;">Page 127</p> <p>1 reporting something? 2 A. I conduct my investigation 3 based on all of the information, the 4 complainant's side of the story is part of it, 5 and then I make credibility decisions and 6 apply the university's policy. 7 Q. Okay. But, to your knowledge, 8 have you read any materials up to the present 9 about issues of false reporting by claimants? 10 A. I can't answer that. I very 11 well may have. There is nothing sticking in 12 my mind on that. 13 Q. Let's get to this case, if we 14 could. Do you have a copy of your summary? 15 A. I do not. 16 MR. SCHWABENLAND: John, could 17 you get -- 18 MR. MYERS: John, me? 19 MR. SCHWABENLAND: Yes. You 20 produced these records. Could you 21 show her a copy -- here, I will give 22 you a number. 23 MR. MIRABELLA: I have got an 24 extra copy. Just bear with me.</p>	<p style="text-align: right;">Page 129</p> <p>1 from 1:15 p.m. to 1:21 p.m.) 2 --- 3 BY MR. SCHWABENLAND: 4 Q. That Exhibit-1, the ones that 5 don't have your names on them, do you know 6 what other attorneys from your office handle 7 the investigation on behalf of St. Joe's? 8 A. At Cozen it would be Andrew 9 Rolfes. 10 Q. Andrew? 11 A. Rolfes, R-O-L-F-E-S. 12 Q. So only one other person? 13 A. At Cozen. At Buchanan it was 14 Andrew Shapren and Andrew Rolfes. So it would 15 be either one of those. 16 Q. Okay. Did Robert Hawkins ever 17 handle anything? 18 A. No. 19 Q. Is Robert Hawkins in your firm 20 now? 21 A. Yes. 22 Q. Do you know if Robert Hawkins 23 ever represented anybody from St. Joe's 24 University?</p>

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<p style="text-align: right;">Page 130</p> <p>1 MR. MYERS: Within some time 2 frame, Ed, or ever? Are you really 3 asking ever? 4 MR. SCHWABENLAND: Either 5 Buchanan Ingersoll or now. 6 THE WITNESS: Not that I know 7 of. I know he's a St. Joe's 8 University grad. Hold on a second. 9 Let me just think. He's a labor 10 lawyer, not an employment lawyer, so I 11 never assigned him or worked with him 12 on any investigations. I believe -- 13 this is a really distant memory. I 14 believe he wrote a letter to -- it had 15 something to do with Ms. Schimelfenig 16 getting admitted to the Pennsylvania 17 Bar. 18 BY MR. SCHWABENLAND: 19 Q. Okay. 20 A. And I believe he might have 21 written a letter, something like that. I 22 don't recall any specifics. 23 Q. But you weren't involved in 24 that?</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Yes. 2 Q. And you determined you couldn't 3 meet prior to spring break, right? 4 A. Right. I think we only had, 5 like, a day or two before they left for spring 6 break. 7 Q. And so you met on March 19th 8 with both individuals? 9 A. I know I met with them the same 10 day. The date I can't recall off the top of 11 my head. 12 Q. And you would have met with, 13 according to your custom, the complainant 14 first? 15 A. Yes. 16 Q. Okay. We need to get the 17 copies. 18 A. Okay. 19 -- -- 20 (Whereupon, a recess was held 21 from 1:25 p.m. to 1:30 p.m.) 22 -- -- 23 (Whereupon, Exhibits Malloy-5, 24 6, and 7 were marked for purposes of</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I was not involved. 2 Q. So Mr. Hawkins may have 3 represented Ms. Schimelfenig at one point? 4 A. Maybe. 5 Q. Okay. 6 A. It could have been a reference 7 letter. Like, I don't have a recollection of 8 it. 9 Q. Okay. In this present case 10 it's my understanding you got the assignment 11 to do the investigation from Community 12 Standards? 13 A. Correct. 14 Q. And then you would contact both 15 individuals for a good time to meet; is that 16 correct? 17 A. Yes. 18 Q. It is my understanding that 19 there was spring break coming up; is that 20 correct? 21 A. Yes. 22 Q. And that you were then leaving 23 on vacation from March 22nd to March 30th; is 24 that correct?</p>	<p style="text-align: right;">Page 133</p> <p>1 identification.) 2 -- -- 3 MR. SCHWABENLAND: Let's go 4 back on the record. 5 BY MR. SCHWABENLAND: 6 Q. I marked as Exhibit-5, "Summary 7 of Findings of Fact, Determination of 8 Credibility, Rationale and Outcome" and 9 attached to that are the Exhibits A through D. 10 And the second thing is Exhibit-6, I have 11 marked "Summary of Investigation, Complaint 12 By" and it's redacted, but the complaint by 13 Jane Roe against John Doe. That's marked as 14 Exhibit-6. That's also SJU Bates stamp number 15 268 to 276. I should go back. Exhibit-5 was 16 Bates stamp number 277 to 299. Finally, 17 Exhibit-7 is a copy of handwritten notes, 18 Bates stamp 380 to 387. Having said that, let 19 me just go back. Did you author each of these 20 exhibits? 21 A. Yes. 22 Q. First of all, what is the 23 difference between Exhibit-5 -- and I'm not 24 talking about the attachment to the exhibits,</p>

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<p style="text-align: right;">Page 134</p> <p>1 A through D. What's the difference between 2 Summary of Findings of Facts, Determination of 3 Credibility, Rationale and Outcome, and the 4 Summary of the Investigation, complaint by 5 Jane Roe against John Doe marked as Exhibit-6? 6 If I could, I will tell you what I see in 7 there if you -- 8 A. You want me to answer your 9 question? 10 Q. Sure. 11 A. Exhibit-6 has a summary of 12 investigation that summarizes interviews. 13 Exhibit-5 does not have that section. 14 Q. Okay. But, except for not 15 having that section, Exhibit-5 goes from 16 documents reviewed as Roman numeral 4 to Roman 17 numeral 5, findings of fact; is that correct? 18 MR. MYERS: What page? 19 MR. SCHWABENLAND: Bates stamp 20 279. 21 THE WITNESS: Yes, you're 22 correct. 23 BY MR. SCHWABENLAND: 24 Q. Okay. So Exhibit-6 has after</p>	<p style="text-align: right;">Page 136</p> <p>1 questions about this, these exhibits that are 2 attached to 5, I would not do that. I give my 3 exhibits as a separate, like, appendix. So I 4 would not have them stapled to a report. 5 Q. Okay. So the exhibits which 6 are Bates stamped, starting with A, 283, to 7 all the way through D, 299, the exhibits would 8 be separate from the report? 9 A. Right. If you look at page 282 10 it says, "Appendix," and I just create that as 11 a separate document. 12 Q. Okay. And the appendix 13 indicates that you had the complaint as A; 14 photographs, B, texts from Ms. Jane Roe, and 15 notes from Mr. John Doe. Did I read that 16 correctly? 17 A. Correct. 18 Q. Okay. Would you resubmit those 19 four exhibits, though, to Community Standards 20 when you issued your summary of findings of 21 fact? 22 A. Yes. When I'm done an 23 investigation I give Community Standards the 24 long report, the short report, the appendix,</p>
<p style="text-align: right;">Page 135</p> <p>1 Document Reviewed, Roman numeral 4, a new 2 Roman numeral 5, Summary of Investigation, and 3 you have A and B in there, interview with the 4 two parties; is that correct? 5 A. Correct. 6 Q. And then you go to findings of 7 fact and other matters; is that correct? 8 A. Yes. 9 Q. Why do you issue -- you can do 10 whatever you want -- but why did you issue two 11 separate documents? 12 A. I always do this. This was 13 part of the sort of format that I was told to 14 use from the beginning. I personally call one 15 the long report, and the short report. Number 16 6 being the long report. I don't exactly know 17 why. My big picture is that they show the 18 short report to the complainant and the 19 respondent, but I don't know that for sure. 20 But I create a short report. That is 21 everything in the long report except the 22 summary of interviews. 23 Q. Okay. 24 A. Just since you're asking</p>	<p style="text-align: right;">Page 137</p> <p>1 my handwritten notes, which you have, and any 2 emails that I have regarding the investigation 3 on the matter. 4 Q. Do you keep a copy of these for 5 your own file? 6 A. Yes. 7 Q. And that's kept by you and 8 maintained confidential for the protection of 9 the students, right? 10 A. Yes. 11 Q. Let me go, if we can, to 12 Exhibit-5 and that first document attached as 13 Exhibit-A, SJU Bates stamp 284. 14 A. Okay. 15 Q. That's the complaint that was 16 authored by Dr. Perry; is that correct? 17 A. Yes. 18 Q. And are these all the documents 19 that you received in preparation for your 20 deposition, by "these," Exhibits 5, 6, and 7? 21 A. I don't know what you mean, 22 received for purposes of my deposition. 23 Q. I'm sorry. Reviewed. 24 A. I reviewed my own file, which</p>

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<p style="text-align: right;">Page 138</p> <p>1 includes this.</p> <p>2 Q. Does your file also include</p> <p>3 emails back and forth? I am trying to set</p> <p>4 things up?</p> <p>5 A. Yes, but I did not review them.</p> <p>6 Q. Okay.</p> <p>7 A. My file is everything I give to</p> <p>8 the university, because that's all I have. I</p> <p>9 turn over everything I have.</p> <p>10 Q. Okay. In the emails to both</p> <p>11 the claimant and the respondent I note that</p> <p>12 there is an informality by you to them. You</p> <p>13 refer to yourself as "Liz;" is that correct?</p> <p>14 A. I would not agree that there is</p> <p>15 an informality, but I do refer to myself as</p> <p>16 Liz and I would typically call them by their</p> <p>17 first names.</p> <p>18 Q. Okay. Again, let's go to</p> <p>19 Exhibit-5, Bates stamp 284, Dr. Perry's</p> <p>20 complaint. Was that the only information you</p> <p>21 had about the actual occurrence?</p> <p>22 A. Yes.</p> <p>23 Q. Is it your understanding that</p> <p>24 Dr. Perry is forming this complaint, I will</p>	<p style="text-align: right;">Page 140</p> <p>1 Bean, assistant director for WADE. Do you</p> <p>2 know who Katie Bean is?</p> <p>3 A. I do not.</p> <p>4 Q. Dr. Perry report said Jane Roe</p> <p>5 told her -- well, I will say what's in here.</p> <p>6 "Jane Roe told me that she and a few friends</p> <p>7 went to a party at LaSalle on Friday night.</p> <p>8 She could not give an exact location, just</p> <p>9 that it was a LaSalle party. She met a guy</p> <p>10 who was very nice and he asked her if she went</p> <p>11 to LaSalle and she said no -- St. Joe's and he</p> <p>12 said the same." I am not sure that's</p> <p>13 accurate, but that's what is in there, right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. "They talked for a while</p> <p>16 and he talked with her friends as well. He</p> <p>17 was very nice to Jane Roe and her friends.</p> <p>18 She told her friends she would catch up with</p> <p>19 them later and began hanging out with him.</p> <p>20 They went outside to get some air and there</p> <p>21 were people doing cocaine in the alley. She</p> <p>22 said she did not want to be near that, as she</p> <p>23 had been clean for almost two years. He</p> <p>24 understood that she had some drug issues by</p>
<p style="text-align: right;">Page 139</p> <p>1 call it, based upon her interview with Jane</p> <p>2 Roe?</p> <p>3 A. I would disagree with your</p> <p>4 characterization of forming the complaint, but</p> <p>5 it's my understanding that Dr. Perry meets</p> <p>6 with --</p> <p>7 Q. Jane Roe?</p> <p>8 A. Jane. I was stumbling for</p> <p>9 that, Jane. And based on that meeting typed</p> <p>10 up this report. Dr. Perry usually puts her</p> <p>11 name at the bottom and did not at this point.</p> <p>12 I do remember reaching out to Bill Bordak to</p> <p>13 make sure that I knew what this was and he</p> <p>14 said yes, this was hers.</p> <p>15 Q. So it's a report of a meeting</p> <p>16 that Dr. Perry had with Jane Roe?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And I'm just referring</p> <p>19 to this as, this is the complaint you were</p> <p>20 referring to, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And it talks about they</p> <p>23 are meeting on Monday, February 26th and that</p> <p>24 Jane Roe came to see Dr. Perry with Katie</p>	<p style="text-align: right;">Page 141</p> <p>1 the fact that she went to recovery high</p> <p>2 school. She said that he gave her some</p> <p>3 alcohol -- liquor 34 (she thinks) and Gatorade</p> <p>4 in a Gatorade bottle." Did I read that</p> <p>5 paragraph correctly?</p> <p>6 A. Yes.</p> <p>7 Q. The second paragraph then goes</p> <p>8 on to talk about what happened according to</p> <p>9 Jane Roe when they returned to St. Mary's. Am</p> <p>10 I correct there?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And is it your</p> <p>13 understanding that St. Mary's is where John</p> <p>14 Doe dormed?</p> <p>15 A. Yes.</p> <p>16 Q. Dr. Perry reports, "They</p> <p>17 returned to SJU with a friend of his and began</p> <p>18 making out in a 'weird' little room on the</p> <p>19 third floor of St. Mary's. He lives in St.</p> <p>20 Mary's but his roommates -- his roommate was</p> <p>21 sleeping. They began making out, which was</p> <p>22 fine, then somehow he put his hand on her</p> <p>23 throat and began squeezing her neck. She felt</p> <p>24 that she could not breathe. At that point she</p>

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<p style="text-align: right;">Page 142</p> <p>1 froze and she had something of a flashback. 2 (She shared with me that she had been abused 3 in the past by a former boyfriend and that he 4 would, say, pin her down like this and say 5 things like -- If you do anything I'll hurt 6 you and hurt your friends.) When he was doing 7 this, Jane Roe reported that he had very 8 different eyes. 'He was not the same boy I 9 went with.' At a point he stopped to go get 10 some water. At that time, Jane Roe text her 11 safe word to her friends and two of them 12 called her. One student was next door in 13 McShain, so she went to be with her. When he 14 returned she was on the phone and told him she 15 had to go because her friend had called, and 16 she left St. Mary's." Did I read that 17 somewhat correctly? 18 A. Yes. 19 Q. And so that's what you had 20 going with? That's the only information you 21 had at the time? 22 A. Yes. 23 Q. So did you show this to the 24 complainant when she appeared?</p>	<p style="text-align: right;">Page 144</p> <p>1 complaint was made and that it happened on -- 2 I'm paraphrasing this -- it happened on 3 February 26, 2018 when a complaint was made to 4 Dr. Mary-Elaine Perry, the Title IX 5 coordinator; is that correct? 6 A. Yes. 7 Q. And we just read her report 8 that you were given; is that correct? 9 A. Yes. 10 Q. Then you summarize the 11 complaint that on February 23rd, 2018, SJU 12 student John Doe put his hand on her throat 13 and began squeezing her neck. And then you 14 have in parentheses, "That's a complaint," 15 right? 16 A. Yes. 17 Q. Next paragraph, "A 18 pre-investigation meeting with," I assume 19 that's Jane Roe, "was held on March 5, 2018 20 and a pre-investigation meeting with John Doe 21 was held on March 6, 2018." The matter was 22 turned over to you, being the investigator on 23 March 6; is that correct? 24 A. Yes.</p>
<p style="text-align: right;">Page 143</p> <p>1 A. I don't remember. 2 Q. You may have, you may not have? 3 A. Correct. 4 Q. But you definitely agree that 5 you didn't show this to John Doe? 6 A. That's my recollection, yes. 7 Q. And so let's go to your 8 complaint attached as Exhibit -- I'll tell you 9 what, since Exhibit-6 is a more comprehensive 10 report, where you put in there the interviews 11 of the two, we'll use Exhibit-6 for the most 12 part. 13 A. Okay. 14 Q. But I might make reference back 15 to Exhibits A through D that are attached to 16 Exhibit-5, recognizing that you didn't attach 17 those to Exhibit-5, right? 18 A. I understand. 19 Q. In the summary of the 20 investigation you list, number one, the 21 complaint and I take it this is the format you 22 were told to use? 23 A. Correct. 24 Q. And so you identify how the</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. So then you identify the 2 policy. Now, you have the sexual misconduct 3 policy. You indicate that "The complaint 4 potentially implicates the St. Joseph's 5 University sexual misconduct policy: Policy 6 regarding sexual assault, sexual harassment, 7 sexual exploitation, domestic violence, dating 8 violence or stalking" and then you have in 9 parentheses, "Sexual misconduct policy," end 10 of parentheses. Did I read that correctly? 11 A. Yes. 12 Q. Then you go on to state what 13 the definition of sexual assault is; is that 14 correct? 15 A. Yes. 16 Q. Now, was it your understanding 17 that at least the allegations were possible 18 sexual assault by John Doe? 19 A. Yes. 20 Q. The sexual assault charge was a 21 specific charge against him; is that correct? 22 A. Yes. The allegations, yes. 23 Q. The allegations. Okay. But, I 24 mean, if I understand correctly, you didn't</p>

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<p style="text-align: right;">Page 146</p> <p>1 put in there any definitions for sexual 2 harassment, sexual exploitation, domestic 3 violence, dating violence, or stalking, 4 correct? 5 A. Right. 6 Q. So you are focusing on sexual 7 assault? 8 A. Yes. 9 Q. That's the charge? 10 A. Yes. 11 Q. In your role as investigator 12 did you acquaint yourself with the crimes code 13 in the Commonwealth of Pennsylvania pertaining 14 to sexual assault? 15 A. I have in reviewing the policy 16 read the definitions that are linked to 17 various definitions. Some of the -- you know, 18 some of the definitions say as incorporated or 19 set forth in the crimes code. So I have read 20 those sections. 21 Q. So what would be the elements 22 in the crimes code of sexual assault, if you 23 know? 24 A. I can't answer that off the top</p>	<p style="text-align: right;">Page 148</p> <p>1 any object by a person upon another person 2 without consent or forcing any person to touch 3 you or the individual in a sexual manner. It 4 is defined as engaging in any sexual contact 5 other than intercourse with another person 6 without that person's consent and/or 7 cognizance. It includes any nonconsensual 8 sexual contact, including any improper 9 touching of intimate body parts. It also 10 includes the nonconsensual removal of 11 another's clothing, indecent contact (i.e., 12 the unwanted touching of intimate body parts, 13 including, but not limited to, genitals, 14 buttocks, groin, or breasts) or causing 15 another to have indecent contact with those 16 intimate body parts." And then you cite 17 sexual misconduct policy Section 18 D(1)(a)(i)(ii). Now, that's that definition 19 you cited for sexual assault, right? 20 A. Yes. 21 Q. Okay. And then you go on to 22 define consent as part of the policy 23 guidelines that you're focusing on; is that 24 correct?</p>
<p style="text-align: right;">Page 147</p> <p>1 of my head. 2 Q. How about, have you also 3 acquainted yourself or caused yourself to be 4 acquainted with any charge of sexual assault 5 which may exist in the federal crimes code? 6 A. I don't believe so. 7 Q. Okay. And so when you're 8 defining the policy you're going straight to 9 the definition in the sexual misconduct policy 10 itself of the school, right? 11 A. Yes. 12 Q. It says, "In relevant part the 13 sexual misconduct policy prohibits sexual 14 assault. The policy defines sexual assault as 15 'having sexual intercourse or sexual physical 16 contact with another individual by the use of 17 threat or force or coercion, without consent, 18 or where the individual is incapacitated.' 19 The policy also provides that sexual assault 20 includes nonconsensual sexual contact which is 21 defined as follows." And then "For purposes 22 of this policy, sexual assault also includes 23 nonconsensual sexual contact. Nonconsensual 24 sexual contact means any sexual touching with</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Yes. 2 Q. And you indicate on there what 3 consent is. "Consent means words or actions 4 that reasonably demonstrate to another a 5 knowing and voluntary agreement to engage in 6 mutually agreed upon sexual activity." Then 7 it goes down, small A, "Consent is active, not 8 passive. B, an affirmative statement or 9 action does not constitute consent if it is 10 given by a person who is unable to make a 11 reasonable judgment concerning the nature or 12 harmfulness of the activity because:" and then 13 it goes down four separate things in small 14 Roman numerals, the first one, incapacitation, 15 second one, unconsciousness, third one, mental 16 disability or incapacitation, the fourth one, 17 if the consent is a product of threat or 18 coercion. C, "In whatever way consent is 19 communicated it must be mutually 20 understandable. D, Silence, in and of itself, 21 or the absence of resistance cannot be 22 interpreted as consent. E, It's a 23 responsibility of the initiator of sexual 24 contact to make sure that they understand</p>

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<p style="text-align: right;">Page 150</p> <p>1 fully what the person with whom they are 2 involved wants and does not want sexually. F, 3 Consent to one form of sexual activity does 4 not imply consent to another form of sexual 5 activity. G, Consent to engage in sexual 6 activity with one person does not imply 7 consent to engage in sexual activity with 8 another. H, A previous relationship or a 9 prior consent does not imply consent to future 10 sexual acts. I, Consent can be withdrawn 11 through actions or words at any time." And 12 you cite to the sexual misconduct policy on 13 the definition of consent, which is Section 14 D(5). So did I read that policy correctly? 15 A. I believe so. 16 Q. Okay. So you are focusing on 17 two things. One is the definition of sexual 18 assault; is that correct? 19 A. Yes. 20 Q. And the other one is consent; 21 is that correct? 22 A. Yes. I think they were the two 23 issues. 24 Q. Okay. And then you list that</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. But it does involve, according 2 to you, a possibility of sexual physical 3 contact with Jane Roe? 4 A. Sexual touching. 5 Q. Sexual touching. Then it says, 6 "Having sexual intercourse or sexual physical 7 contact with another individual by use of 8 threat or force or coercion." I will stop 9 there. We are not dealing with threat or 10 coercion, are we? 11 A. No. 12 Q. So I take it you're saying we 13 are dealing here with force; is that correct? 14 A. Yes. 15 Q. And is force defined anyplace? 16 A. You're taking a definition, a 17 little part of the definition here, and you 18 have to look at the whole thing. So the 19 following sentence also says "The policy also 20 provides that sexual assault includes." 21 Q. Oh. Okay. But as to this 22 definition at the very beginning, "Sexual 23 physical contact with another individual by," 24 one of three things, threat or force or</p>
<p style="text-align: right;">Page 151</p> <p>1 you interviewed the following witnesses. Can 2 we agree, even though it's redacted, that you 3 interviewed two witnesses, Jane Roe and John 4 Doe? 5 A. Correct. 6 Q. And you also indicate the 7 documents you reviewed. And that's what we 8 noted earlier; is that correct? 9 A. I don't remember noting it 10 earlier, but my report makes reference to 11 these four documents. 12 Q. Four documents? 13 A. Yes, I agree, the appendix 14 documents, yes, sir. 15 Q. Then you go on to do a summary 16 of the investigation and the interviews that 17 you had with each person; is that correct? 18 A. Yes. 19 Q. Okay. I'm going back in the 20 policy here. I want to focus on something 21 here. The definition of sexual assault, this 22 does not involve sexual intercourse, right? 23 A. This complaint does not involve 24 sexual intercourse, yes, correct.</p>	<p style="text-align: right;">Page 153</p> <p>1 coercion. All I am asking is: Are you 2 focusing on force with regard to your 3 findings? 4 A. I am focusing on not having 5 consent. 6 Q. So there wasn't really any 7 force used, then? 8 A. Well, I believe there was force 9 used. 10 Q. Because there is two things. 11 It's "Contact with another by the use of 12 threat or force or coercion without consent or 13 where the individual is incapacitated." I 14 read that right? 15 A. Yes. That's only one sentence 16 of the definition, but you read that. 17 Q. But there is three elements 18 there. I will work backwards. Or where the 19 individual is incapacitated, we are not 20 dealing with that, right? 21 A. Right. 22 Q. Without consent, that's an 23 issue in your mind as possibly, right? 24 A. Right.</p>

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<p style="text-align: right;">Page 154</p> <p>1 Q. So out of the three, "by the 2 use of threat or force or coercion," are you 3 focusing on the force issue? 4 A. Yes, but I still think you're 5 taking one part of the definition out of 6 context. 7 Q. Let's go down there. "The 8 policy also provides that sexual assault 9 includes nonconsensual sexual contact, which 10 is defined as follows: Nonconsensual sexual 11 contact means any sexual touching with any 12 object by a person upon another person without 13 consent or forcing any person to touch you or 14 the individual in a sexual manner. It is 15 defined as engaging in any sexual contact 16 other than intercourse with another person 17 without the person's consent and/or 18 cognizance. It includes any nonconsensual 19 sexual contact, including any improper 20 touching of intimate body parts. It also 21 includes the nonconsensual removal of 22 another's clothes, indecent contact, i.e., the 23 unwanted touching of an intimate body part, 24 included but not limited to genitals,</p>	<p style="text-align: right;">Page 156</p> <p>1 clothes, does it? 2 A. No. 3 Q. At the very beginning of that 4 paragraph that we quoted, "Nonconsensual 5 sexual contact means any sexual touching with 6 any object by a person upon another person 7 without consent." 8 A. Correct. 9 Q. Okay. So one of the things you 10 had to determine in your analysis was was 11 there sexual touching? 12 A. Correct. 13 Q. And then you have to determine 14 was it with or without consent? 15 A. Yes. 16 Q. Okay. And then that sentence 17 also goes on to say, "or forcing any person to 18 touch you or the individual in a sexual 19 manner." So that doesn't apply here, right? 20 A. Right. 21 Q. Okay. If there was consent 22 given, then one of your purposes of your 23 analysis would be going back to the definition 24 of consent, whether or not that consent was</p>
<p style="text-align: right;">Page 155</p> <p>1 buttocks, groin, or breasts or causing another 2 to have indecent contact with those intimate 3 body parts." Did I read that correctly? 4 A. I believe so. 5 Q. Okay. So let's go back and see 6 what we can focus on here, because this case 7 does not involve some touching of intimate 8 body parts, right? 9 A. Well, you've seen my analysis 10 on that. 11 Q. Okay. But does it involve the 12 touching of intimate body parts? 13 A. Not in and of itself. 14 Q. Were any intimate body parts 15 touched? 16 A. No. 17 Q. You hesitated, not in and of 18 itself? 19 A. Yes. You're sort of taking 20 sound bites, though. 21 Q. I am trying to break down the 22 elements here to see what it is not about and 23 what we are focusing on. Okay? It does not 24 include the nonconsensual removal of another's</p>	<p style="text-align: right;">Page 157</p> <p>1 later withdrawn? 2 A. Yes. 3 Q. Who has the responsibility to 4 prove the case? I know it's a preponderance 5 of the -- 6 A. Nobody. The standard is a 7 preponderance of the evidence and it's the 8 university's obligation to investigate the 9 complaint. 10 Q. Doesn't the university have 11 an -- I am throwing this out to you. Doesn't 12 the university have an obligation to prove 13 lack of consent or elements -- let me ask you 14 a different way. Doesn't the university have 15 the obligation to prove the elements showing 16 sexual assault? 17 MS. ENGLE: Object to form. 18 MR. MYERS: Object to the form 19 of the question. Are you asking this 20 witness the standard by which she 21 evaluates the evidence and the rules 22 by which she does something or are you 23 asking a broader question about 24 whether there are other people or</p>

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<p style="text-align: right;">Page 158</p> <p>1 other aspects of St. Joe's that do 2 things? I honestly don't understand 3 your question. 4 BY MR. SCHWABENLAND: 5 Q. Can you answer my question? 6 MR. MYERS: No, you are not 7 going to answer, because I don't 8 understand it. I am asking you to 9 rephrase it. 10 BY MR. SCHWABENLAND: 11 Q. According to you, you have a 12 preponderance of the evidence, and so does 13 the -- who has the burden to show either that 14 sexual assault occurred or sexual assault 15 didn't occur? 16 A. I don't think I can answer that 17 in the hypothetical way that you have 18 propounded the question. I think in general 19 it is the university's obligation to 20 investigate these complaints. For example, if 21 there was a complainant who didn't really 22 remember very much based on her knowledge, you 23 can't hold that against her, right, you can't 24 say, "You don't remember anything, so you</p>	<p style="text-align: right;">Page 160</p> <p>1 A. But not because of the Dear 2 Colleague Letter, but if you use the example I 3 gave you. 4 Q. Okay. We will come back to the 5 elements in a second. You have Dr. Perry's 6 report concerning the statements made by 7 Ms. Roe to her and then you have a chance to 8 meet with her? 9 A. Yes. 10 Q. At that point she was -- this 11 is on Page 3 of your report, which is Bates 12 stamped 270. I hope I am doing this 13 accurately. 14 MR. MYERS: We are there. 15 What's the question? 16 BY MR. SCHWABENLAND: 17 Q. Did you get to that? 18 A. Yes. Is there a question 19 pending? 20 Q. No. 21 A. I am looking at 270. 22 Q. Okay. Do you remember her? 23 A. Generally. 24 Q. Do you remember what she looked</p>
<p style="text-align: right;">Page 159</p> <p>1 don't meet your burden," because it's not the 2 complainant's burden -- 3 Q. She would have been 4 incapacitated -- 5 MR. MYERS: Please don't 6 interrupt. 7 THE WITNESS: I understand 8 incapacitated. That is unable to 9 consent. But there are people who 10 don't remember things, for example. 11 So the best I can answer your question 12 is, I understand it is the 13 university's obligation to fairly 14 investigate complaints by a 15 preponderance of the evidence. It's 16 not solely saying that that is the 17 complainant's burden. 18 BY MR. SCHWABENLAND: 19 Q. Do you recall in the Dear 20 Colleague Letter of 2017 reference to the fact 21 that the university has a burden of proving? 22 A. That's what I was just trying 23 to explain. 24 Q. Okay.</p>	<p style="text-align: right;">Page 161</p> <p>1 like, anything? 2 A. I thought she was slender with 3 long brown hair. 4 Q. When you first meet with her 5 what did you say to her? 6 A. I tell the complainant and the 7 respondent the same thing. I tell them who I 8 am. I tell them I am an employment lawyer 9 with Cozen, my role in this case is not to be 10 a lawyer but to be an investigator and that I 11 will do an investigation. I make findings of 12 what happened, I tell them, I make 13 determinations of who is telling the truth, 14 and my role is only to determine whether the 15 policy is violated, and that my report goes to 16 Community Standards and anything after that is 17 handled by Community Standards and Community 18 Standards will be in touch with them. 19 Q. Do you tell them what Community 20 Standards will do after they get your report? 21 A. Not specifically. You know, I 22 don't think I specifically do, no. I tell 23 them, "When I am done I give my report to 24 Community Standards and then they handle</p>

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<p style="text-align: right;">Page 162</p> <p>1 anything afterwards." I think I probably say 2 from time to time, including whether any 3 discipline is issued or any actions taken on 4 my report. 5 Q. Okay. 6 A. I tell them -- 7 Q. Did you say that in this case? 8 MR. MYERS: Please let her 9 finish the answer. 10 MR. SCHWABENLAND: I am just 11 following up from that. 12 MR. MYERS: You interrupted 13 her, Ed. 14 THE WITNESS: I think you told 15 me what do I say. Then I usually try 16 to talk to them about, what is your 17 major, why did you come to St. Joe's, 18 what do you want to do when you 19 graduate. I do try to have some 20 personal conversation. Then I say, 21 "Let's go through the complaint. I 22 want to ask you what happened." 23 BY MR. SCHWABENLAND: 24 Q. When you said sometimes I tell</p>	<p style="text-align: right;">Page 164</p> <p>1 friend? 2 A. I didn't ask. I believe so. I 3 do confirm with them that they're a student. 4 Q. Did the student participate in 5 any discussion or is she -- I take it it was a 6 female student? 7 A. Yes. 8 Q. Did this student participate in 9 any discussion? 10 A. No. 11 Q. And so it then says -- at least 12 you then start to go, summary of what she 13 says, "On February 23rd, 2018 Jane Roe" -- let 14 me just call her Roe -- "attended a party at a 15 frat house at LaSalle University (she is 16 childhood friends with one of the frat 17 members). She arrived shortly before 18 11:00 p.m. accompanied by her friends, St. 19 Joe's University students," and then it looks 20 like several people are identified; is that 21 correct? 22 A. I believe that's true. 23 Q. Do you know how many friends 24 went with her?</p>
<p style="text-align: right;">Page 163</p> <p>1 them what Community Standards may do or 2 sanctions, did you tell them that in this 3 case? 4 A. I don't remember. 5 Q. Okay. So then you -- 6 A. I do remember telling them 7 everything else I said, though, this is who I 8 am, this is what I do, this is what I decide, 9 and then you're going to hear from Community 10 Standards. 11 Q. Okay. Did you tell the 12 complainant that you have the report of 13 Ms. Perry, whether or not you showed it to her 14 or not? 15 A. I think so. 16 Q. Okay. And did she comment on 17 that at all? 18 A. No. 19 Q. And so let's go through this, 20 if I could. During this meeting she had 21 another student with her who acted as her 22 adviser; is that correct? 23 A. She did. 24 Q. And the student was, what, a</p>	<p style="text-align: right;">Page 165</p> <p>1 A. I could review my notes. I am 2 thinking two or three. 3 Q. Okay. If it is in your 4 notes -- 5 A. Well, they are all redacted 6 too. It appears to be -- I am looking at 7 Exhibit-7 -- that there are three lines 8 redacted, so there were three other names, but 9 I don't know that. 10 Q. "She did not have any alcohol 11 before arriving at the party. Roe chugged 'a 12 couple of beers' after she arrived at the 13 party. She was dancing with her friends." 14 Did I read that correctly? 15 A. Yes. 16 Q. Why did you put in there 17 "chugged"? Did she say that? 18 A. That's what she told me. 19 Q. And the next paragraph, it then 20 goes, "Roe ran into Doe while she was holding 21 a girlfriend's hand to make her way to the 22 bathroom (She did not know Doe) She rammed 23 into him when she later made her way to a keg. 24 Doe said, 'I am so sorry' -- do you know who</p>

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<p style="text-align: right;">Page 166</p> <p>1 said "I am so sorry"? I think it's Roe. I 2 think I misstated that. After the sentence 3 ending in K -- 4 A. I believe it's the female. 5 Q. Okay. I misstated that. I 6 apologize. "Roe say, 'I am so sorry.' He 7 said, 'It's okay. I'm' -- then he stated his 8 name and he introduced himself. "Doe then 9 asked if she went to school here, meaning 10 LaSalle. She said she went to Temple." Then 11 it goes on. You wrote, "He said she 'lied 12 about Temple' and that she goes to St. Joe's 13 too." 14 A. It should be she, she said that 15 she lied. 16 Q. So she first said that she went 17 to Temple. Is it your understanding when Doe 18 said, "Well, I go to St. Joe's," she then 19 said, "Well, I lied. I go to St. Joe's too"? 20 A. Yes. 21 Q. "They began talking. He gave 22 her a Gatorade bottle which contained liquor 23 43 (he told her what was in it). Doe also 24 talked with her friends and was 'really cool</p>	<p style="text-align: right;">Page 168</p> <p>1 BY MR. SCHWABENLAND: 2 Q. It then goes on to say, "when 3 inside." I take it you're referring to both 4 of them? 5 A. Correct. 6 Q. "She went to the bathroom to 7 compose herself after the encounter with the 8 drug dealer. Her friend and Doe then rejoined 9 her. She told them all that she did not buy 10 drugs and Doe told her not to. Roe thinks 11 that made him a decent guy." Did I read that 12 correctly? 13 A. Yes. 14 Q. And so up until that point they 15 are getting to know one another and she thinks 16 he's an okay guy and she's spending some time 17 with him, right? 18 MS. ENGLE: Objection. 19 THE WITNESS: Yes. 20 BY MR. SCHWABENLAND: 21 Q. Then it goes on to say that "We 22 are kissing at the party." I take it you mean 23 Doe and Roe? 24 A. Yes.</p>
<p style="text-align: right;">Page 167</p> <p>1 with them'." Is that how Roe described it? 2 A. Yes. 3 Q. "Roe thought Doe seemed like a 4 nice guy." So as of that time she's relating 5 that she meets this guy, he seems nice, and 6 they are interacting together, right? 7 A. Yes. 8 Q. The next paragraph, "They went 9 outside because the room was hot. There was a 10 drug dealer selling cocaine. Roe, who is a 11 recovering drug user, asked the man what price 12 was because she wanted it. Doe told her not 13 to do it, that she would regret it. Roe had 14 shared with Doe that she previously had a drug 15 addition and had attended a recovery high 16 school. Her friend from LaSalle told the drug 17 dealer to leave." Did I read that correctly? 18 A. Yes. 19 Q. So is Ms. Roe saying that she 20 was interested in buying cocaine and that 21 Mr. Doe talked her out of it? 22 MS. ENGLE: Objection. 23 THE WITNESS: In general, yes. 24</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. "She consented to this and had 2 no complaints about it." Then you have down, 3 I take it you mean "Doe asked her if she 4 wanted to come back to St. Mary's. Roe said 5 yes and offered to call an Uber. Doe had come 6 to the party with a friend, so they left in 7 the friend's car. She text her friend, said 8 she was leaving. Roe said that Doe was 9 'flirting' with other girls in the car but she 10 did not care. She was sitting on Doe's lap in 11 the car." And so far I've read that 12 correctly? 13 A. Yes. 14 Q. So as of that point they are 15 kissing. Did you inquire as to how they are 16 kissing? 17 A. I don't believe so. 18 Q. Did you inquire if they were 19 touching each other's face or neck? 20 A. I do not believe so. 21 Q. But from your interview of 22 Ms. Roe is Roe giving her consent so far to 23 her contact with Doe? 24 A. Yes.</p>

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<p style="text-align: right;">Page 170</p> <p>1 Q. And as of that point she's</p> <p>2 thinking he's a "decent guy"?</p> <p>3 MS. ENGLE: Objection.</p> <p>4 THE WITNESS: That's what she</p> <p>5 told me.</p> <p>6 BY MR. SCHWABENLAND:</p> <p>7 Q. When Ms. Doe indicated that she</p> <p>8 was asked to go back to St. Mary's by Doe was</p> <p>9 it your understanding that she consented, she</p> <p>10 was in agreement to do that?</p> <p>11 A. Yes.</p> <p>12 Q. Did she get into any discussion</p> <p>13 about him flirting with the other girls or why</p> <p>14 is she bringing it up?</p> <p>15 A. No. Only what I have written</p> <p>16 here.</p> <p>17 Q. I am going back. She indicated</p> <p>18 that she and her girlfriends arrived at</p> <p>19 approximately 11:00 p.m.; is that correct?</p> <p>20 A. I don't know.</p> <p>21 Q. Go back. Page 3, at the</p> <p>22 beginning of it, that second paragraph, "She</p> <p>23 arrived shortly before 11:00 p.m. accompanied</p> <p>24 by her friends." That's Bates stamp 270.</p>	<p style="text-align: right;">Page 172</p> <p>1 A. 2:33, right, Page 290.</p> <p>2 Q. But my question is: Did she</p> <p>3 indicate when she left LaSalle with Doe?</p> <p>4 A. I don't remember that.</p> <p>5 Q. At least you know that she had</p> <p>6 her friends there and Doe had his friend there</p> <p>7 who drove, right?</p> <p>8 A. Right.</p> <p>9 Q. And do you know that, according</p> <p>10 to her statement, they had other girls in the</p> <p>11 car that they were going to drop off?</p> <p>12 A. I know she said -- or he said</p> <p>13 they were dropping off the LaSalle students.</p> <p>14 Q. Okay.</p> <p>15 A. I don't know whose friends they</p> <p>16 were. Somebody was dropped off.</p> <p>17 Q. And you don't know where they</p> <p>18 were going to be dropped off?</p> <p>19 A. Right.</p> <p>20 Q. But if they were LaSalle</p> <p>21 students it would be someplace close by?</p> <p>22 A. You would think, but you don't</p> <p>23 know.</p> <p>24 Q. Do you know how long it took</p>
<p style="text-align: right;">Page 171</p> <p>1 A. That's arriving at the party.</p> <p>2 Q. That's what I meant.</p> <p>3 A. All right. I thought you meant</p> <p>4 to the dorm.</p> <p>5 Q. No. I apologize. I meant she</p> <p>6 arrived at the party with her friends at about</p> <p>7 11:00.</p> <p>8 A. Correct. Yes.</p> <p>9 Q. Did she indicate how long they</p> <p>10 had been there prior to leaving?</p> <p>11 A. I don't remember.</p> <p>12 Q. Did you try to inquire as to</p> <p>13 timing at all?</p> <p>14 A. Yes. I don't remember off the</p> <p>15 top of my head, but she showed me the texts to</p> <p>16 her friends, which I think are at, like, 2:30</p> <p>17 in the morning, something like that, when she</p> <p>18 leaves St. Mary's.</p> <p>19 Q. Okay.</p> <p>20 MR. MYERS: If you want to look</p> <p>21 at the texts, you can.</p> <p>22 BY MR. SCHWABENLAND:</p> <p>23 Q. The text to her friend at St.</p> <p>24 Mary's, it says 2:33.</p>	<p style="text-align: right;">Page 173</p> <p>1 them to get back to St. Joe's University?</p> <p>2 A. I do not.</p> <p>3</p> <p>4 (Whereupon, Exhibit Malloy-8</p> <p>5 was marked for purposes of</p> <p>6 identification.)</p> <p>7</p> <p>8 BY MR. SCHWABENLAND:</p> <p>9 Q. I am showing you what's been</p> <p>10 marked as Exhibit-8. It's a copy of a text</p> <p>11 message and it's a text message from Roe to</p> <p>12 her friends saying -- what's the time on that?</p> <p>13 A. 1:31.</p> <p>14 Q. Okay. At 1:31 she indicates</p> <p>15 she is outside, there is a drug dealer selling</p> <p>16 coke and she wants some, right?</p> <p>17 A. Right.</p> <p>18 Q. Okay.</p> <p>19 A. It's the same as 293.</p> <p>20 Q. Okay. And so at least by 1:31</p> <p>21 she's outside and that's when Doe, according</p> <p>22 to Roe, talks her out of buying the coke,</p> <p>23 right?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">Page 174</p> <p>1 Q. So --</p> <p>2 A. I am not sure I can agree with</p> <p>3 that. Okay?</p> <p>4 Q. Okay.</p> <p>5 A. The text is timed 1:31, "Guys,</p> <p>6 there is coke here." That does not mean that</p> <p>7 she already didn't talk to the guy and went</p> <p>8 inside. So I don't know if this is</p> <p>9 contemporaneous with her talking to the coke</p> <p>10 guy or not. I just don't know.</p> <p>11 Q. Well, at least there is</p> <p>12 something going on about the coke. Can I see</p> <p>13 that? And her exact words, "Guys, there's</p> <p>14 coke here. I want it." So at least that's</p> <p>15 when she is still at LaSalle, right?</p> <p>16 A. At the party, yes, seems to be.</p> <p>17 Q. So what you're saying is that</p> <p>18 she may still not be outside, she may be back</p> <p>19 in and texting that?</p> <p>20 A. Correct.</p> <p>21 Q. Was it your understanding there</p> <p>22 were a lot of people there at the party?</p> <p>23 A. Yes.</p> <p>24 Q. So, nevertheless, when she goes</p>	<p style="text-align: right;">Page 176</p> <p>1 A. I'd have to see it.</p> <p>2 Q. Go ahead.</p> <p>3 A. What page are you on? Yes, I</p> <p>4 see, at the bottom of Page 272. Yes.</p> <p>5 Q. Roe estimated that they were in</p> <p>6 the little room at St. Mary's for 15 minutes?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. That's her estimation,</p> <p>9 but did you ask her what time did they get</p> <p>10 back to St. Mary's?</p> <p>11 A. I don't recall doing that.</p> <p>12 Q. Did you ask for any</p> <p>13 surveillance tapes or swipe card monitoring</p> <p>14 things to find out when they got back?</p> <p>15 A. I did not.</p> <p>16 Q. Is there some reason why you</p> <p>17 didn't?</p> <p>18 A. I didn't think the complaint</p> <p>19 turned on when they got back.</p> <p>20 Q. Well, the complaint may turn on</p> <p>21 timing or how long they were alone together,</p> <p>22 don't you think?</p> <p>23 MS. ENGLE: Object to form.</p> <p>24 THE WITNESS: She said they</p>
<p style="text-align: right;">Page 175</p> <p>1 back inside she goes to the bathroom and then</p> <p>2 reunites with her friends and Doe; is that</p> <p>3 correct?</p> <p>4 A. That's what she told me, yes.</p> <p>5 Q. So we are now into it being</p> <p>6 after 1:30 a.m., right?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ask her any questions</p> <p>9 about, "What time did you leave?" or "How long</p> <p>10 did it take you to get back to St. Joe's?" or</p> <p>11 anything about timing? I didn't see anything</p> <p>12 in your handwritten notes. Go ahead and take</p> <p>13 a look.</p> <p>14 A. I don't remember. I have the</p> <p>15 clear impression that they were only on St.</p> <p>16 Joe's campus for a very short period of time.</p> <p>17 I don't know if that's an impression I put</p> <p>18 together from talking to both of them. But I</p> <p>19 would agree with you, there is nothing in my</p> <p>20 handwritten notes on that.</p> <p>21 Q. I will represent to you that</p> <p>22 later on you put in there that they were in</p> <p>23 St. Mary's about 15 minutes. Does that ring a</p> <p>24 bell?</p>	<p style="text-align: right;">Page 177</p> <p>1 were back for 15 minutes.</p> <p>2 BY MR. SCHWABENLAND:</p> <p>3 Q. I understand, but that could be</p> <p>4 right or wrong.</p> <p>5 MS. ENGLE: Objection.</p> <p>6 THE WITNESS: My own opinion is</p> <p>7 I did not think the complaint turned</p> <p>8 on when they got back.</p> <p>9 BY MR. SCHWABENLAND:</p> <p>10 Q. So am I correct that you didn't</p> <p>11 ask to -- inquire of her any about what time</p> <p>12 they left or arrived back at St. Mary's?</p> <p>13 MS. ENGLE: Objection. Asked</p> <p>14 and answered.</p> <p>15 THE WITNESS: I don't remember</p> <p>16 doing so, although I do have the firm</p> <p>17 impression they were only back at St.</p> <p>18 Mary's for a small period of time.</p> <p>19 BY MR. SCHWABENLAND:</p> <p>20 Q. Okay. From your discussions</p> <p>21 with Ms. Roe did you seek to interview her</p> <p>22 friends, either those she was at the party</p> <p>23 with or anybody who came to meet her after she</p> <p>24 left St. Mary's?</p>

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<p style="text-align: right;">Page 178</p> <p>1 A. I did not. I would typically 2 interview the complainant and then the 3 respondent next and then make a decision based 4 on whether anybody else needed to be 5 interviewed. 6 Q. Did you consider interviewing 7 her girlfriends? 8 A. I don't know if "considered" is 9 the right word. I did not feel that there was 10 the need to interview anybody else, because, I 11 believe -- only Jane and John were in the room 12 together and there were no other witnesses to 13 that and he agreed that when he came back to 14 the room after leaving for a short period of 15 time that she was on the phone and quickly 16 left afterwards. 17 Q. Okay. But in terms of finding 18 out before they left LaSalle, did you consider 19 asking her friends how they appeared, were 20 they enjoying themselves kissing, were they 21 hugging each other? Did you think that would 22 be helpful in figuring out what happened that 23 night? 24 A. I did not.</p>	<p style="text-align: right;">Page 180</p> <p>1 and Roe kissing at the party, right? 2 A. Yes. 3 Q. Did you inquire any more as to 4 how often they would kiss, whether they would 5 hold each other, what was going on, was one 6 caressing the neck or the head, anything like 7 that? 8 A. I did not. 9 Q. Was it your knowledge that 10 Ms. Roe left on her own free will to go back 11 to St. Mary's with Mr. Doe? 12 A. Yes. 13 Q. Now, go to the next page. 14 MR. MYERS: 272? 15 MR. SCHWABENLAND: 272. 16 BY MR. SCHWABENLAND: 17 Q. "After arriving at St. Mary's 18 they went to the kitchen for water. Roe said 19 she needed to sober up a little." Did she 20 explain any more than what -- 21 A. No. 22 Q. Did she say what she meant by 23 that? 24 A. No.</p>
<p style="text-align: right;">Page 179</p> <p>1 MS. ENGLE: Objection to form. 2 MR. MYERS: I would ask you to 3 clarify the question as to whether -- 4 are you asking whether she thought 5 interviewing the friends would be 6 helpful on the question of whether 7 they were kissing and enjoying 8 themselves at LaSalle or some other 9 question? 10 MR. SCHWABENLAND: I asked her. 11 She answered me. So you can rephrase 12 anything you want, but let me -- 13 MR. MYERS: You can leave it in 14 the ridiculous, ambiguous state you 15 left it. It's fine with me. I'm not 16 worried about the record. I'd ask you 17 to try to be a little more precise, 18 Ed. 19 BY MR. SCHWABENLAND: 20 Q. Let me go to that last 21 paragraph that I read. That's Page 4, which 22 is Bates stamped 271. Other than saying they 23 were kissing at the party -- and you're 24 referring to what Roe is telling you about Doe</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Did you inquire of that? 2 A. I don't recall doing so. 3 Q. Okay. "Doe said his roommate 4 was asleep but they could go to the third 5 floor. After arriving at a small room, Doe 6 closed the door. Ms. Roe does not know if he 7 locked it. There were two chairs and two 8 small couches without arms. They were 9 kissing, which Roe said she consented to and 10 was fine with. Then Doe sat on top of her and 11 put his hand around her throat and squeezed 12 her neck. He was still kissing her while he 13 was squeezing her neck. Doe [sic] 14 believes she said, 'What the fuck'. 15 A. No. I think that's Roe. 16 Q. Did I say Doe? I'm sorry. 17 Thank you. "Roe believes she said, 'What the 18 fuck'. He pulled away. Doe said she saw his 19 eyes and he looked 'so scary'. 20 A. I believe that's Roe. 21 Q. I apologize. Let me read that 22 again. 23 A. Jane and John are easier. 24 Q. Okay. Let do it that way. "He</p>

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<p style="text-align: right;">Page 182</p> <p>1 pulled away. Jane said she saw his eyes and 2 he looked 'so scary'. John moved away from 3 her and left the room (the lights in the room 4 were on). Roe said this reminded her of a 5 previous abusive boyfriend who would squeeze 6 her neck." Did I read that paragraph -- after 7 you were nice enough to correct me, did I read 8 that correctly then? 9 A. I believe so. 10 Q. Okay. So let's get to the 11 point here. At a certain point when they 12 returned to St. Mary's they go in the kitchen 13 for water. That's on a different floor; is 14 that your understanding or you don't know? 15 A. I assumed it was on a different 16 floor and the little room was upstairs. 17 Q. There is no reference to 18 whether or not they were kissing while in the 19 kitchen. Did you ask her that at all? 20 A. I don't believe so. She didn't 21 tell me that. 22 Q. They go in, up to the third 23 floor, and they both sit down on two chairs; 24 is that correct?</p>	<p style="text-align: right;">Page 184</p> <p>1 kissing her? Is he straddling her? Do you 2 recall? 3 A. I don't recall. 4 Q. But, nevertheless, he is 5 sitting on her lap? 6 A. Right. I specifically remember 7 saying, "What do you mean, sitting on your 8 lap?" 9 Q. And up until that point they 10 had been kissing and caressing each other, 11 right? 12 A. Yes. 13 Q. And then she mentioned that he 14 took his one hand and put it at her neck? 15 A. Yes. 16 Q. Had his hand been on her neck 17 while they were kissing? 18 A. If you remember what I told you 19 a minute ago, I didn't ask her that, but he 20 told me, yes. 21 Q. Did you accept that in your 22 analysis? 23 A. Yes. 24 Q. And so up until that point of</p>
<p style="text-align: right;">Page 183</p> <p>1 A. Yes. 2 Q. Okay. And up until that point 3 the kissing was consented to and she said that 4 was fine? 5 A. Yes. 6 Q. Okay. There's no mention on 7 here about if they had their hands on each 8 other's neck or head while they were kissing. 9 Did you inquire as to that? 10 A. I don't believe I asked Jane, 11 but I asked John. 12 Q. Okay. And what did John say? 13 A. I believe he says yes, they 14 were touching each other's necks and throats. 15 Q. Why didn't you ask Jane? 16 A. I don't -- I don't know. 17 Q. Okay. Then she says that "John 18 sat on top of her and put his hand around her 19 throat and squeezed her neck." Now, when she 20 said that did you ask what she meant by 21 sitting on top of her? 22 A. Yes. She said he moved over 23 and, like, sat on her lap. 24 Q. Is he sitting sideways and</p>	<p style="text-align: right;">Page 185</p> <p>1 the squeeze was it your understanding that she 2 had given her consent to him to kiss her and 3 to both engage in touching each other's face 4 and neck? 5 A. She gave her consent to 6 kissing, which as my analysis says, to some 7 extent includes touching your face and neck 8 area. 9 Q. All I am asking is, was it your 10 understanding in your analysis that as of that 11 time, until the squeeze, the consent had been 12 given for him to have his hand on her neck and 13 head while kissing? 14 A. Yes, as my analysis explains. 15 Q. Okay. Now, she said that he 16 squeezed her neck. Did she demonstrate to you 17 how he squeezed with the one hand? 18 A. I believe she did. She 19 demonstrated by putting her hand on her neck. 20 Q. So she took, what, a thumb on 21 one side of the neck and fingers on the other 22 side of the neck? 23 A. Yes. As I recall, yes. 24 Q. And at what point did she say</p>

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<p style="text-align: right;">Page 186</p> <p>1 the words, "What the F"?</p> <p>2 A. While he was squeezing her.</p> <p>3 Q. Immediately when he squeezed</p> <p>4 her?</p> <p>5 A. She said it so he would stop.</p> <p>6 Q. Pardon me?</p> <p>7 A. She said it so he would stop.</p> <p>8 Q. I understand that, but, if you</p> <p>9 know, as soon as he started to squeeze her did</p> <p>10 she say that so he would stop or did she allow</p> <p>11 it to keep going for several minutes?</p> <p>12 A. I don't know. I certainly got</p> <p>13 the impression that it was immediately,</p> <p>14 because it hurt.</p> <p>15 Q. So at that point she's calling</p> <p>16 his attention to the fact that he is doing</p> <p>17 something that she doesn't like?</p> <p>18 A. Yes.</p> <p>19 Q. And he stops right away?</p> <p>20 A. Yes.</p> <p>21 Q. She then says he pulled away</p> <p>22 and was that immediate too, after she said,</p> <p>23 "What the F"?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 A. You're referring to Page 284?</p> <p>2 Q. 284, yes.</p> <p>3 A. It says what it says.</p> <p>4 Q. Okay. But did you review that</p> <p>5 with her, about, "Well, you didn't say" -- if</p> <p>6 you know, "You didn't say that you said</p> <p>7 anything like 'What the F'"?</p> <p>8 A. I did not.</p> <p>9 Q. Okay. Did you ask her any</p> <p>10 questions about her boyfriend?</p> <p>11 A. No.</p> <p>12 Q. The reason I say that is that</p> <p>13 she claims that whatever he was doing to the</p> <p>14 throat triggered her memory of this boyfriend,</p> <p>15 right?</p> <p>16 MS. ENGLE: Object to the form.</p> <p>17 MR. MYERS: Objection to the</p> <p>18 form. She wasn't at the deposition.</p> <p>19 She can't possibly know what was</p> <p>20 explained at Jane Roe's deposition.</p> <p>21 So I'm not going to let her answer</p> <p>22 that question. If you want to</p> <p>23 rephrase it, you can.</p> <p>24</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. And then she said, "She saw his</p> <p>2 eyes and he looked 'so scary'." And "so</p> <p>3 scary" is in quotes. Did she say how long she</p> <p>4 saw his eyes?</p> <p>5 A. No.</p> <p>6 Q. But she then indicates that he</p> <p>7 left the room for some reason and that when he</p> <p>8 squeezed her neck and looked at his eyes she</p> <p>9 was -- it reminded her of a previous abusive</p> <p>10 boyfriend who would squeeze her neck?</p> <p>11 A. Yes.</p> <p>12 Q. Did she say why he left the</p> <p>13 room, if you know?</p> <p>14 A. She did not.</p> <p>15 Q. Did you ask her any questions</p> <p>16 about the previous report issued by Dr. Perry</p> <p>17 and, more specifically, it says -- this is at</p> <p>18 Bates stamp 284, where she said she felt she</p> <p>19 couldn't breathe and at that point she froze</p> <p>20 and had something of an flashback regarding</p> <p>21 her old boyfriend. But there is no indication</p> <p>22 that she said "What the F" or alerted him that</p> <p>23 she did not like what he was doing at that</p> <p>24 point?</p>	<p style="text-align: right;">Page 189</p> <p>1 BY MR. SCHWABENLAND:</p> <p>2 Q. I am asking if you asked her</p> <p>3 here. She basically says that it reminded her</p> <p>4 of a previous abusive boyfriend who would</p> <p>5 squeeze her neck.</p> <p>6 A. That's what she told me and I</p> <p>7 did not inquire into the boyfriend further.</p> <p>8 Q. But why didn't you -- aren't</p> <p>9 you? And the reason I ask that is, aren't you</p> <p>10 dealing with trying to figure out, is this an</p> <p>11 overreaction or a misperception of something</p> <p>12 because of a past experience?</p> <p>13 A. I am focusing on whether the</p> <p>14 conduct happened and whether it violated the</p> <p>15 policy.</p> <p>16 Q. So in focusing on whether the</p> <p>17 conduct happened you are interviewing Ms. Roe,</p> <p>18 so it's important to know what her perception</p> <p>19 is at the time; is that correct?</p> <p>20 A. It's important to know what</p> <p>21 happened and whether it violated the policy.</p> <p>22 Q. But if --</p> <p>23 A. I took the boyfriend thing as</p> <p>24 that's why it scared her so much.</p>

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<p style="text-align: right;">Page 190</p> <p>1 Q. Okay.</p> <p>2 A. Not that it went to whether it</p> <p>3 happened or not. That's the way that she</p> <p>4 presented it to me, "This reminded me of."</p> <p>5 Q. Okay. Are you done?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So you did not inquire</p> <p>8 any more about how the boyfriend may have</p> <p>9 abused her in the past?</p> <p>10 A. Correct.</p> <p>11 Q. You just took what she said at</p> <p>12 face value?</p> <p>13 A. I take nothing at face value.</p> <p>14 I recorded in the part of this paper that we</p> <p>15 are talking about what she told me.</p> <p>16 Q. I understand. But you're not</p> <p>17 probing into that any further, right?</p> <p>18 A. I did not ask her any further,</p> <p>19 correct.</p> <p>20 Q. And so did you ask her any</p> <p>21 questions about her medical background?</p> <p>22 A. No.</p> <p>23 Q. Now, she indicated that she had</p> <p>24 been clean for about two years but had been</p>	<p style="text-align: right;">Page 192</p> <p>1 possibilities?</p> <p>2 MS. ENGLE: Objection.</p> <p>3 THE WITNESS: I have to</p> <p>4 determine what happened.</p> <p>5 BY MR. SCHWABENLAND:</p> <p>6 Q. I understand that, but you</p> <p>7 determine by asking questions, right? You're</p> <p>8 an investigator?</p> <p>9 A. I am an investigator.</p> <p>10 Q. Okay. So did you ask her any</p> <p>11 more questions about her boyfriend?</p> <p>12 A. I did not.</p> <p>13 Q. I will represent to you that</p> <p>14 Ms. Roe has indicated that she has -- had been</p> <p>15 diagnosed with PTSD because of a previous</p> <p>16 relationship with a boyfriend over a six-month</p> <p>17 period where he did certain things to her.</p> <p>18 Did she mention she had PTSD?</p> <p>19 A. No.</p> <p>20 Q. Would you agree with me that</p> <p>21 that would be relevant to a determination</p> <p>22 whether or not she is misperceiving things?</p> <p>23 A. I did not view it as such. I</p> <p>24 did not know it and I did not view it as such.</p>
<p style="text-align: right;">Page 191</p> <p>1 addicted to drugs, right?</p> <p>2 A. I think that's what the Perry</p> <p>3 complaint says.</p> <p>4 Q. Okay. But did you ask her any</p> <p>5 other questions about that?</p> <p>6 A. No.</p> <p>7 Q. Did you ask her if she had been</p> <p>8 taking any drugs, even marijuana or anything?</p> <p>9 A. No.</p> <p>10 Q. You did ask her if she had</p> <p>11 anything to drink that night before getting to</p> <p>12 the party and she said no, but she had a</p> <p>13 couple of beers that she chugged when she got</p> <p>14 there, right?</p> <p>15 A. I don't recall whether I asked</p> <p>16 her that or she told me that, but I did know</p> <p>17 that.</p> <p>18 Q. So now we have a situation</p> <p>19 where she has an ex-boyfriend that she thought</p> <p>20 abused her, who would squeeze her neck and you</p> <p>21 have Doe with his hand on her neck at a</p> <p>22 certain point. So the question you have to</p> <p>23 determine, is she actually being squeezed or</p> <p>24 is she overreacting; isn't that one of the</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. It then goes on in the next</p> <p>2 paragraph that Jane -- I am going to say Roe</p> <p>3 and Doe -- "Roe texted her friends. Doe came</p> <p>4 back to the room while she was texting. Roe</p> <p>5 thought that he may have been expecting more,</p> <p>6 like something sexual. Roe text" -- and I</p> <p>7 guess what's redacted is one of her</p> <p>8 girlfriends -- "to act like she needed her.</p> <p>9 So that girlfriend called" -- I'm sorry.</p> <p>10 There is a bunch of redaction. Redaction,</p> <p>11 "Called," somebody redacted, redacted, "text,"</p> <p>12 redacted, "who called her back." Then, "Roe</p> <p>13 said, No, I am okay. "Her friend," that's</p> <p>14 redacted, "said Do you want me to come? Roe</p> <p>15 replied, Yes." Roe left and Roe met her</p> <p>16 outside. Doe gave her his sweatshirt and said</p> <p>17 she might be cold. Doe text her at 2:39 a.m.</p> <p>18 that he was going to bed but would leave his</p> <p>19 phone on and he hoped her friend was okay. He</p> <p>20 text, Hey, to her the next day, which she</p> <p>21 ignored." Then at the very end, "Roe</p> <p>22 estimated that they were in the little room at</p> <p>23 St. Mary's for 15 minutes." Is that the</p> <p>24 extent of your interview with Ms. Roe?</p>

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<p style="text-align: right;">Page 194</p> <p>1 A. It is.</p> <p>2 Q. Did you consider any further</p> <p>3 follow-up?</p> <p>4 A. I just wanted to make one</p> <p>5 correction. I think when you were reading you</p> <p>6 said that Roe met her outside and I think that</p> <p>7 redaction has to do with her friend, a friend</p> <p>8 met her outside.</p> <p>9 MS. ENGLE: Also, there are two</p> <p>10 more paragraphs on the next page that</p> <p>11 have to do with the Roe interview.</p> <p>12 MR. SCHWABENLAND: Okay. Thank</p> <p>13 you.</p> <p>14 BY MR. SCHWABENLAND:</p> <p>15 Q. It continues, the interview,</p> <p>16 "On Sunday," it says, I would imagine Roe and</p> <p>17 somebody else, I take it one of her</p> <p>18 girlfriends, at least or more, "were at CVS in</p> <p>19 the parking lot. Ms." somebody redacted</p> <p>20 "noticed bruises on Ms. Roe's neck. She took</p> <p>21 photographs, which Roe gave to the</p> <p>22 investigator." She gave you photographs,</p> <p>23 right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. And so the interview with</p> <p>2 Mr. Doe, again, you would have said the same</p> <p>3 thing that you said to Ms. Roe?</p> <p>4 A. As an introduction, yes.</p> <p>5 Q. And so you have down, "Doe</p> <p>6 first met Roe at a party at LaSalle on</p> <p>7 February 23, 2018, bumped into each other,</p> <p>8 introduced, and began a conversation. They</p> <p>9 were kissing," which who said initiated it?</p> <p>10 Is it Doe or Roe?</p> <p>11 A. I don't know. You have to look</p> <p>12 at an unredacted one, unless I can tell from</p> <p>13 my notes.</p> <p>14 Q. But they were kissing, which</p> <p>15 either he or she initiated, and dancing,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. "Roe said she wanted to see St.</p> <p>19 Mary's and they returned to campus." I take</p> <p>20 it Roe and Doe "began kissing again in the</p> <p>21 kitchen at St. Mary's. They went to a room on</p> <p>22 the third floor and were kissing. Doe said he</p> <p>23 had his hands on Roe's neck area while he</p> <p>24 kissed her face and she, likewise, touched</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. And then you put in there, "I,"</p> <p>2 meaning you, "asked Roe why she thought that</p> <p>3 Doe squeezed her neck. She said she did not</p> <p>4 view it as pleasurable. She did not ask for</p> <p>5 it and did not consent to it. She thinks he</p> <p>6 did it to hurt her, because she felt he was</p> <p>7 choking her." Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. But am I correct that</p> <p>10 you later found that Doe did not intend to</p> <p>11 cause her any harm?</p> <p>12 A. Yes. Physical harm, yes.</p> <p>13 Q. And that's the extent of your</p> <p>14 interview with Ms. Roe?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. You then go on to</p> <p>17 interview Doe on that same day. By the way,</p> <p>18 do you know how long the interview lasted of</p> <p>19 Ms. Roe?</p> <p>20 A. I don't. I would estimate</p> <p>21 about an hour.</p> <p>22 Q. Okay. And how about Mr. Doe,</p> <p>23 same estimation?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 197</p> <p>1 Doe's neck area while she kissed him." So</p> <p>2 that's your conversation with him?</p> <p>3 A. So far, yes.</p> <p>4 Q. Okay. "Doe said he does not</p> <p>5 remember squeezing her neck area and does not</p> <p>6 think he did it (He continuously told me that</p> <p>7 if Roe said he did so he would not say that</p> <p>8 she was lying). I tried to keep him focused</p> <p>9 on what he actually independently remembered</p> <p>10 about the evening. He said he is shocked by</p> <p>11 the complaint, considers himself a respectful</p> <p>12 person and wants to learn from this</p> <p>13 experience." Now, is it clear that Doe said</p> <p>14 to you he did not recall or remember ever</p> <p>15 squeezing her neck area and does not think he</p> <p>16 did that?</p> <p>17 A. When I specifically asked him</p> <p>18 that. So he was overwhelmingly, "I am not</p> <p>19 going to call her a liar. If she said I did</p> <p>20 it, I did it. I am going to take</p> <p>21 responsibility. I am going to learn from</p> <p>22 this," continuously said things like that.</p> <p>23 And I said, "I want you to focus on what you</p> <p>24 recall specifically happening."</p>

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<p style="text-align: right;">Page 198</p> <p>1 Q. Okay.</p> <p>2 A. When I said, "Do you recall" or</p> <p>3 "Did you squeeze her neck area," he said he</p> <p>4 didn't remember and does not think that he did</p> <p>5 that.</p> <p>6 Q. Okay. So he denied it, at</p> <p>7 least when you had him focus on that, right?</p> <p>8 MS. ENGLE: Object to the form.</p> <p>9 MR. MYERS: Object to the form</p> <p>10 of the question.</p> <p>11 BY MR. SCHWABENLAND:</p> <p>12 Q. Did he deny it?</p> <p>13 A. I would not consider that a</p> <p>14 denial in the context of the whole interview.</p> <p>15 Q. I understand. But you didn't</p> <p>16 perceive that as him trying to be a gentleman</p> <p>17 and he was trying to figure out why for some</p> <p>18 reason is she claiming she felt uncomfortable?</p> <p>19 MS. ENGLE: Object to the form.</p> <p>20 THE WITNESS: I did not</p> <p>21 perceive it as that.</p> <p>22 BY MR. SCHWABENLAND:</p> <p>23 Q. So did you perceive that as an</p> <p>24 admission?</p>	<p style="text-align: right;">Page 200</p> <p>1 of the interview did you view that as an</p> <p>2 admission?</p> <p>3 MS. ENGLE: Objection. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: I don't think I</p> <p>6 viewed it as an admission, but I</p> <p>7 didn't view it as denial, because he</p> <p>8 also told me --</p> <p>9 BY MR. SCHWABENLAND:</p> <p>10 Q. What is the other option, then?</p> <p>11 MS. SCHIMELFENIG: Wait. She</p> <p>12 was speaking.</p> <p>13 MR. SCHWABENLAND: Excuse me.</p> <p>14 BY MR. SCHWABENLAND:</p> <p>15 Q. What is the other option?</p> <p>16 MR. MYERS: No. Excuse me.</p> <p>17 Read back the question, read back the</p> <p>18 answer, and then you get to finish</p> <p>19 your answer.</p> <p>20 -- --</p> <p>21 (Whereupon, the court reporter</p> <p>22 read back from the record.)</p> <p>23 -- --</p> <p>24 THE WITNESS: So my answer is,</p>
<p style="text-align: right;">Page 199</p> <p>1 A. You have to read the whole</p> <p>2 thing. You can't just take a sentence out of</p> <p>3 context. But he did not deny squeezing her</p> <p>4 neck.</p> <p>5 Q. Did he admit to squeezing her</p> <p>6 neck?</p> <p>7 A. He said he didn't remember and</p> <p>8 didn't think that he did it when asked</p> <p>9 specifically.</p> <p>10 Q. Is that an admission or a</p> <p>11 denial?</p> <p>12 A. I think it's vague.</p> <p>13 Q. So you can't tell one way or</p> <p>14 the other?</p> <p>15 MS. ENGLE: Objection.</p> <p>16 THE WITNESS: If you are just</p> <p>17 focusing on that question. In the</p> <p>18 context of the rest of the</p> <p>19 interview --</p> <p>20 BY MR. SCHWABENLAND:</p> <p>21 Q. Okay.</p> <p>22 A. In the context of the rest of</p> <p>23 the interview I did not view that as a denial.</p> <p>24 Q. So in the context of the rest</p>	<p style="text-align: right;">Page 201</p> <p>1 you have to look at the totality of</p> <p>2 the interview. He said he wouldn't</p> <p>3 call her a liar, it was a learning</p> <p>4 experience, he was going to learn from</p> <p>5 it, that people have told him that he</p> <p>6 is too strong, when I told him that</p> <p>7 she said it hurt her and that she had</p> <p>8 bruises, and that his text messages</p> <p>9 with which he gave me said that he</p> <p>10 wondered if she thought he was too</p> <p>11 aggressive or too forceful. So I put</p> <p>12 all of that together.</p> <p>13 BY MR. SCHWABENLAND:</p> <p>14 Q. The text message he gave you</p> <p>15 was his statement?</p> <p>16 A. I don't know if it was a</p> <p>17 statement. He told me that he wrote it up</p> <p>18 after he met with whoever he met, Emily,</p> <p>19 whoever he met with in Community Standards.</p> <p>20 Q. Okay. And he brought that with</p> <p>21 him?</p> <p>22 A. I view a statement as something</p> <p>23 more formal and signed. But they were his</p> <p>24 notes that he wanted me to have.</p>

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<p style="text-align: right;">Page 202</p> <p>1 Q. So in his notes did you 2 recognize that he was questioning why on Earth 3 she was feeling uncomfortable? 4 A. I don't know. "I wonder if I 5 was holding her in some way that felt forceful 6 or aggressive, because, although that was not 7 my intent, it clearly made her uncomfortable," 8 so that's what it reads. 9 Q. Because he had been told by 10 Emily Forte that it involves something to do 11 with some roughness on his part, right? 12 A. Right. But he says "forceful 13 or aggressive." 14 Q. I understand. But in terms of 15 trying to figure out what he was thinking did 16 you take into consideration that his statement 17 was such that he even considered, "Well, maybe 18 I pushed her into the chair or pushed her 19 hip," right? 20 A. I was looking at all of it. 21 Q. Okay. Was he respectful during 22 your meeting? 23 A. Yes. 24 Q. Let's go back to the statement.</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Okay. In your handwritten 2 notes, starting at 384 is your notes of -- 3 you're interviewing him, right? 4 A. Yes. 5 Q. He relates that he is a 6 sophomore? 7 A. Yes. And the introductory part 8 that I told you about that I did is not 9 written down here. 10 Q. The two met at LaSalle, right? 11 A. That's what it says. 12 Q. He actually bumped into her and 13 then they had a conversation and then they 14 found themselves kissing, right? 15 A. Yes. 16 Q. What is the next word? 17 A. He said that she was vaping an 18 electronic cigarette and was blowing smoke 19 into his mouth. 20 Q. So that was the vapor thing? 21 A. Yes. 22 Q. "They kissed, talked and 23 danced," is that what he said? 24 A. Yes.</p>
<p style="text-align: right;">Page 203</p> <p>1 "Doe left the room to get his laptop so the 2 two of them could watch a movie. When he 3 returned Roe was on the phone. She said she 4 needed to leave because a friend was sick. 5 According to Doe, Roe did not seem 6 uncomfortable. He walked her down to the 7 lawn. She turned around and kissed him and 8 said good-bye and left with a female." Does 9 that conclude your notes of the interview of 10 Doe? 11 A. It concludes the summary that's 12 typewritten here. My notes are fuller than 13 that and then, you know, there is other 14 information that wasn't necessarily written 15 down. But you read the document, I believe. 16 Q. When you say your notes, you're 17 talking about your handwritten notes? 18 A. Yes. 19 Q. And what else is in the notes 20 there? 21 A. Well, we'd have the compare it 22 line by line, right? So the document that we 23 are reviewing, Exhibit-6, is a summary of the 24 interview.</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. And then what's the next line, 2 "I was" what? 3 A. "Telling her about St. Mary's." 4 Q. And then the next thing, "She 5 said she wanted to see it, the car" and then 6 somebody's name, I guess that's his buddy, 7 "was driving"? 8 A. I believe so. 9 Q. Okay. "Dropped off LaSalle's 10 kids first. Dropped us at St. Mary's. 11 Kissing in the kitchen." They go to the 12 kitchen, right? 13 A. Correct. 14 Q. "He doesn't want to make 15 someone make uncomfortable"? 16 A. "Don't want to put someone, 17 make uncomfortable." 18 Q. He says, "I've thought about 19 it." Thought about what, this idea, what he 20 could possibly have done? It's your notes 21 so -- 22 A. I don't know. He said he 23 thought about it. I thought that to be the 24 allegations against him.</p>

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<p style="text-align: right;">Page 206</p> <p>1 Q. "They were touching and 2 talking;" is that correct? 3 A. Yes. 4 Q. Something "to third floor for 5 Netflix." 6 A. "Up to third floor for 7 Netflix." 8 Q. Okay. What's the next word? 9 A. "Walked up to third floor." 10 Q. Okay. "I pushed her to chair," 11 that's what he said? 12 A. Yes. 13 Q. And that's what he said in 14 his -- whatever he handed you as saying 15 possibly he thought pushing her in the hip? 16 A. Was too aggressive or 17 something, yes. 18 Q. "Maybe" what? 19 A. "Maybe inappropriate to push 20 her. Meant playful." 21 Q. So he's saying, "I meant it to 22 be playful," but he is speculating, was it 23 inappropriate to push her, right? 24 A. Yes.</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. "Said she needed to leave." 2 And she seemed fine at the time according to 3 Doe, right? 4 A. Yes. 5 Q. Outside her girlfriend was 6 waiting, or "Girl waiting," right? 7 A. Yes. 8 Q. "She," meaning Roe, "turned 9 around and kissed Doe again and said 10 good-bye," right? 11 A. Yes. 12 Q. Then he says, "I text her," 13 right? 14 A. Right. 15 Q. Then you go down and he states, 16 "I was confused. I didn't realize she was 17 uncomfortable. I consider myself respectful 18 person. I don't remember squeezing her neck. 19 I don't think she is lying" or -- was lying or 20 is lying? 21 A. "Is" is what I wrote. 22 Q. "I didn't mean to make her 23 uncomfortable. I," what, "should have" -- 24 A. "Should have made her</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. But he indicated she was 2 smiling during that? 3 A. That's what he said. 4 Q. And then he says, "I didn't 5 pick up she was uncomfortable." Did I read 6 that correctly? 7 A. Yes. 8 Q. And then he says again they 9 were kissing. Then he says, "I" something 10 "going to get stuff, the laptop." What's 11 that? 12 A. He left for some reason. I 13 said, "I was going to get stuff, laptop." 14 Q. "I came back." They kissed 15 again, according to him, right? 16 A. Yes. 17 Q. "She gets a phone call. Said 18 friends call each other." What is the next 19 word? 20 A. "Friend sick, so need to help 21 her, McShain." That's another dorm. 22 Q. And then he kissed her as they 23 are going out, right? 24 A. Yes.</p>	<p style="text-align: right;">Page 209</p> <p>1 comfortable," I assume. I write as fast as I 2 can. 3 Q. I understand. I am worse than 4 you are. "I didn't think it was both hands"? 5 A. That's what I wrote, yes. 6 Q. "It wasn't okay if I did it. 7 Mortifying by this." He meant to say I am 8 mortified? 9 A. Mortified, probably, by this. 10 Q. "I thought she had hands on my 11 neck," that's what he said. "I never meant to 12 do it. I don't recall. So specifically I 13 would say she was not lying. I've been told 14 strong," what, that he is strong? 15 A. Yes. I told him that she said 16 that it hurt her and that there were bruises 17 and he said, "I have been told I was strong." 18 Q. "Maybe being affectionate," so 19 that's coupled with "I've been told strong," 20 right? 21 A. It's the next line on my notes. 22 That's all I can say. 23 Q. So then the next thing is -- 24 you have a star there -- "I don't remember</p>

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<p style="text-align: right;">Page 210</p> <p>1 squeezing neck."</p> <p>2 A. This is where I specifically</p> <p>3 said to him, "Don't tell me about what you</p> <p>4 think she said" or, you know, to try to get</p> <p>5 him off this, you know, "I don't deny it.</p> <p>6 Learn experience. I am not saying she's</p> <p>7 lying." This is where I specifically said, "I</p> <p>8 want to know what you specifically remember</p> <p>9 about this" and tried to focus on that.</p> <p>10 Q. Okay.</p> <p>11 A. I didn't leave it the way it</p> <p>12 was, as you can see. I tried to get him to</p> <p>13 focus on that and that's when he said "I don't</p> <p>14 remember squeezing her neck."</p> <p>15 Q. "Hand on neck while kissing"?</p> <p>16 A. Yes.</p> <p>17 Q. "She didn't say uncomfortable,"</p> <p>18 I take it she didn't say she was</p> <p>19 uncomfortable?</p> <p>20 A. Right.</p> <p>21 Q. "I take full responsibility. I</p> <p>22 take this as a learning opportunity. I didn't</p> <p>23 realize she was leaving because of this. She</p> <p>24 went to high school in Utah, rehab." What's</p>	<p style="text-align: right;">Page 212</p> <p>1 when kissing."</p> <p>2 Q. Okay.</p> <p>3 A. "She seemed fine."</p> <p>4 Q. Then this thing about liquor,</p> <p>5 "Liquor 43 plus Gatorade to mix."</p> <p>6 A. Right.</p> <p>7 Q. "Not much. I had more to drink</p> <p>8 than she did. She was fine, completely in her</p> <p>9 senses."</p> <p>10 A. I was trying to discover</p> <p>11 whether there was any incapacitation issue.</p> <p>12 It didn't seem to be.</p> <p>13 Q. There was no indication by</p> <p>14 either or him that she was in some way</p> <p>15 inebriated or lacked her mental faculties?</p> <p>16 A. That is correct.</p> <p>17 Q. So is that the extent of your</p> <p>18 conversation with him?</p> <p>19 A. Yes.</p> <p>20 MR. SCHWABENLAND: Take a short</p> <p>21 break?</p> <p>22 THE WITNESS: Sure.</p> <p>23</p> <p>24 (Whereupon, a recess was held</p>
<p style="text-align: right;">Page 211</p> <p>1 that, "Oh, no"?</p> <p>2 A. I asked him this. I said, "Did</p> <p>3 you know that she had been a former drug</p> <p>4 abuser?" He says, "Yes. She went to high</p> <p>5 school in Utah, rehab." I don't know what --</p> <p>6 "Okay now. Two years clean."</p> <p>7 Q. She had taken coke and heroin.</p> <p>8 Then what is the next thing?</p> <p>9 A. "Coke outside," he was telling</p> <p>10 me about the cocaine dealer outside who was --</p> <p>11 Jane was asking how much it cost. "You will</p> <p>12 regret it. One day clean." He was saying</p> <p>13 that "You will regret it, because now you're</p> <p>14 two years clean and if you do this tonight you</p> <p>15 will only be one day clean," that's what he</p> <p>16 was explaining to me.</p> <p>17 Q. Okay. It says, "I was</p> <p>18 shocked."</p> <p>19 A. "I was angry about guys who are</p> <p>20 not respectful. Consent to me is important.</p> <p>21 I want to make it right."</p> <p>22 Q. And then what does he say?</p> <p>23 A. "I was shocked with complaint.</p> <p>24 Pushing her to chair, playful. Hand on neck</p>	<p style="text-align: right;">Page 213</p> <p>1 from 3:12 p.m. to 3:22 p.m.)</p> <p>2</p> <p>3 BY MR. SCHWABENLAND:</p> <p>4 Q. A couple of questions. Did you</p> <p>5 show Doe any pictures?</p> <p>6 A. I did not.</p> <p>7 Q. But you had the pictures with</p> <p>8 you, right?</p> <p>9 A. I did.</p> <p>10 Q. Is there some reason you didn't</p> <p>11 show him the pictures?</p> <p>12 A. Based on his interview with me</p> <p>13 it was my opinion that it was not necessary to</p> <p>14 show him the pictures, because he said that --</p> <p>15 I am not going to repeat everything I just</p> <p>16 said, we have talked about all this -- that he</p> <p>17 touched her in that area, didn't deny it, you</p> <p>18 know, the whole thing I talked about before we</p> <p>19 took the break.</p> <p>20 Q. But that touching in the area,</p> <p>21 he did that with permission, right?</p> <p>22 A. Touching in the area, his text</p> <p>23 notes about forceful and aggressive, I read</p> <p>24 them when he was in front of me, "People have</p>

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<p style="text-align: right;">Page 214</p> <p>1 said that I am so strong. I don't deny it. 2 It's a learning experience. I am not going to 3 say she's lying," everything that we just 4 talked about. 5 Q. So you made the determination 6 not to show him any pictures? 7 A. Yes. 8 Q. Did you also make -- 9 A. That it was not necessary to 10 show him any pictures. 11 Q. Well, you ultimately made a 12 finding of responsibility against him, right? 13 A. I did. 14 Q. So it's not necessary for your 15 purpose, but don't you think the guy charged 16 with the offense has a right to see what the 17 evidence is against him? 18 A. I did not feel that it was 19 necessary for my purposes of doing the 20 investigation. 21 Q. I didn't ask you that. 22 A. You're just arguing with me. 23 Q. No, I am not. Did you think 24 that a person charged has a right to see what</p>	<p style="text-align: right;">Page 216</p> <p>1 THE WITNESS: I did not think 2 it was necessary for my investigation. 3 I told him that she said that it hurt 4 and that she had bruises and his 5 answer to that was, "People have told 6 me I'm strong." 7 BY MR. SCHWABENLAND: 8 Q. Did you tell him that she had 9 bruises? 10 A. Yes. 11 Q. Did you show him where? 12 A. I said on her neck. 13 Q. Did you describe the bruises? 14 A. No. 15 -- -- 16 (Whereupon, Exhibit Malloy-9 17 was marked for purposes of 18 identification.) 19 -- -- 20 MR. MYERS: Again, you don't 21 have copies of this, Ed? 22 MR. SCHWABENLAND: I do. 23 MS. ENGLE: What is it? 24 MR. MYERS: This is 917. This</p>
<p style="text-align: right;">Page 215</p> <p>1 the evidence is against him? 2 A. I don't think it's a right. 3 Q. Do you think it's only fair and 4 reasonable to show the accused what the 5 evidence is against him? 6 MR. MYERS: Object to the form 7 of the question. If the question is 8 whether she thought it was only fair 9 to show him these pictures, you can 10 ask that, although it would be for at 11 least the third time. The broader 12 hypothetical question has no 13 conceivable relevance here, Ed, and I 14 would ask you to sort of -- we are 15 five and a half hours into this -- to 16 stick to the facts of the case. 17 MR. SCHWABENLAND: Can you read 18 back the question, please? 19 --- 20 (Whereupon, the court reporter 21 read back from the record.) 22 --- 23 MR. MYERS: Object to the form. 24 You can answer the question.</p>	<p style="text-align: right;">Page 217</p> <p>1 is Liz Malloy's response to the 2 investigator with respect to the 3 appeal. 4 BY MR. SCHWABENLAND: 5 Q. Do you recognize that document? 6 A. I do. 7 Q. And is that your response to 8 the appeal that was taken by Doe? 9 A. Yes, sir. 10 Q. May I have that one second? 11 You know that Mr. Doe made a charge that you 12 you neither showed him pictures of the bruise 13 nor did you tell him that she had bruises? 14 A. I would not know that unless 15 you showed me a copy of his appeal. I did get 16 the copy of the appeal. 17 -- -- 18 (Whereupon, Exhibit Malloy-10 19 was marked for purposes of 20 identification.) 21 -- -- 22 BY MR. SCHWABENLAND: 23 Q. What's been marked as 24 Exhibit-10, that's the appeal letter. The</p>

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<p style="text-align: right;">Page 218</p> <p>1 Bates stamp is 919. It begins 919 and it 2 goes -- 3 MR. MYERS: No. 4 THE WITNESS: Mine says 320. 5 MR. SCHWABENLAND: Okay. 6 BY MR. SCHWABENLAND: 7 Q. It's 320 and it ends at 323. I 8 call your attention to the second page, 321. 9 A. You need to give me some time 10 to read this. 11 Q. Read the -- 12 A. I'm going to read the whole 13 thing. 14 Q. Okay. 15 MR. MYERS: All set. 16 BY MR. SCHWABENLAND: 17 Q. Now, let me call your attention 18 to the second page there. I am going down to 19 the fourth paragraph down there. You see 20 that? It's the long one. 21 A. Why are you calling it the 22 fourth paragraph? 23 Q. There's one, two, three, four. 24 A. These are printed out in</p>	<p style="text-align: right;">Page 220</p> <p>1 Malloy's entire interview with me she never 2 clarified the charges against me or showed me 3 any picture of bruises. I think this is 4 totally wrong. Not knowing that there were 5 any bruises or pictures of bruises I continued 6 to believe throughout my interview with Ms. 7 Malloy that this was some sort of 8 misunderstanding. Ms. Malloy, though, knew 9 that there were claims of bruising and may 10 have taken any comments to mean something 11 other than what I meant. For example, when 12 asked about having my hand on her neck I 13 didn't realize Roe was accusing me of 14 squeezing her so hard that it caused some 15 bruises. Had I known that I would have been 16 very adamant that I could not have done that 17 to her. Instead, I was hesitant to call Roe a 18 liar, even though I had a very different 19 memory. I am concerned that Ms. Malloy 20 interpreted my hesitancy to call Roe a liar as 21 some sort of admission." And you were given 22 this to comment, in part, as to what he was 23 saying, right? 24 A. Yes.</p>
<p style="text-align: right;">Page 219</p> <p>1 different ways, so which one are you talking 2 about? 3 MR. MYERS: What is the 4 beginning of the sentence, Ed? 5 MR. SCHWABENLAND: I'm sorry. 6 BY MR. SCHWABENLAND: 7 Q. The fourth paragraph down, one, 8 two, three, four, that one. 9 A. Okay. 10 Q. He in here, "I feel that this 11 entire process is biased against the accused 12 and in favor of the accuser. I was not 13 allowed to know the deals of the claims 14 against me until after I was convicted (found 15 responsible and sanctioned). Apparently, the 16 fact that Roe had some sort of bruise on her 17 neck was the deciding factor in my guilt, but 18 throughout the entire disciplinary process I 19 was never told about bruises and never showed 20 any pictures of bruises until after I was 21 convicted. I was not given a chance to gather 22 or present any evidence in my own defense 23 because I didn't even know what charges I was 24 defending myself against. Throughout Ms.</p>	<p style="text-align: right;">Page 221</p> <p>1 Q. Okay. Then if you look at your 2 comment there -- and that's Exhibit what 3 again? What is the exhibit? 4 A. Nine. 5 Q. Thank you. Go down to the 6 third paragraph and you said, "The fact that 7 Ms. Roe had a bruise on her neck was not the 8 deciding factor." Then you go on to say, 9 "Finding of Fact Number 7 is that Mr. Doe did 10 not obtain Ms. Row's consent to squeeze her 11 neck and she did not consent to that. That is 12 stated in the rationale as well. I did not 13 show Mr. Doe the photographs. His position 14 that because he did not see the photographs 15 and, therefore, did not know the charges 16 against him is false. I told Mr. Doe that the 17 charge was that he squeezed her neck without 18 consent." Did I read that correctly, at least 19 that part of it? 20 A. Yes. 21 Q. I don't see in there where you 22 say "I told him that there was bruising on the 23 neck." 24 A. I did not say that. So I get</p>

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<p style="text-align: right;">Page 222</p> <p>1 this appeal document. I'm not asked to 2 respond to it paragraph by paragraph, line by 3 line. I can provide whatever information I 4 want. So I was responding to the fact that he 5 did know the charges against him. He says 6 because he didn't see the pictures that he 7 didn't know the charges against him. We 8 talked about this hours ago. I specifically 9 told him when he came in to meet with me what 10 the charges against him were and I did tell 11 him that her -- not in the beginning, I didn't 12 do it in the beginning -- closer to the end of 13 the interview, where my notes say, "People 14 tell me I am too strong," I did say that she 15 said that there were bruises, that it hurt her 16 and that there were bruises. 17 Q. Do you say in your notes, "I 18 told him that there were bruises"? Do you say 19 in your handwritten notes? 20 A. I do not. 21 Q. So nowhere either in your 22 handwritten notes of the interview with 23 Mr. Doe nor in your response to the appeal, 24 whatever you decide to write, is it reflected</p>	<p style="text-align: right;">Page 224</p> <p>1 Mr. Doe. So I told him, like -- you only 2 reviewed my notes. You didn't ask me about 3 anything else and now you're assuming that I 4 am done. I told him, like I do every student 5 I talk to, "If there's anything else you want 6 to tell me, if there's anything you think of 7 when you leave here, please reach out to me. 8 I will meet with you in person or we can do it 9 by phone." I as a matter of course do that 10 with everybody. And I also ask them, "Is 11 there anybody else you want me to talk to? 12 And if you can't think of it now, tell me 13 later." I am fully cognizant of the fact that 14 it is hard for anybody, much less students, to 15 in one meeting tell me everything that they 16 might want to tell me. So I always say that, 17 "Please reach out to me. I will come back on 18 campus or we can do it by phone." 19 Q. So you left it up to him or Ms. 20 Roe to reach out to you? 21 A. Yes. And if I had reasons to 22 reach out to them myself I could and I have 23 done that before. 24 Q. So you had no reason to do any</p>
<p style="text-align: right;">Page 223</p> <p>1 that you ever told him about the existence of 2 a bruise? 3 A. I told him about the existence 4 of a bruise. I agree with you that it is not 5 in my -- that that question -- I don't do it 6 in question and answer format. That question 7 is not in my notes. 8 Q. Okay. 9 A. And Exhibit-9 is not a 10 play-by-play answer to every allegation they 11 make. 12 Q. All I am asking, it's not in 13 there? It's not in Exhibit-9? 14 A. Correct. 15 Q. And it's not in your 16 handwritten notes that you ever told him about 17 the existence of a bruise? 18 A. What I said is not. His answer 19 is. 20 Q. Okay. Thank you. You can put 21 that one aside now. You were at the end of 22 the meeting with Mr. Doe. Did you follow 23 anything up with Ms. Roe? 24 A. Let me finish my interview with</p>	<p style="text-align: right;">Page 225</p> <p>1 further investigation, then? 2 A. That was my ultimate 3 conclusion, yes. I didn't make it that day. 4 Q. Well, I mean, your meeting is 5 on the 19th; is that correct? 6 A. Yes. 7 Q. You went on vacation 8 March 22nd; is that correct? 9 A. Sounds right. 10 Q. And you returned March 30th or 11 so? 12 A. I was gone a week. 13 Q. Okay. And when did you dictate 14 or type up your notes? 15 A. I don't know. 16 Q. It's dated April 3rd. 17 A. If I dated it April 3rd that's 18 when I finished the report. I frequently 19 write up the summaries of the interviews after 20 they are done. 21 Q. Okay. 22 A. That day or the next day. 23 Q. Okay. And then you would have 24 submitted it to Community Standards that day?</p>

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<p style="text-align: right;">Page 226</p> <p>1 A. April 3rd, yes, the day after.</p> <p>2 Q. Did you either during your</p> <p>3 interview of Ms. Roe or any follow-up -- well,</p> <p>4 you had no further follow-up with Ms. Roe,</p> <p>5 right?</p> <p>6 A. Yes, that is correct.</p> <p>7 Q. And you had no further</p> <p>8 follow-up with Mr. Doe, right?</p> <p>9 A. Correct.</p> <p>10 Q. And so --</p> <p>11 A. I believe Jane sent me her text</p> <p>12 messages, but I had no further conversation</p> <p>13 with her.</p> <p>14 Q. Okay. But you had the names of</p> <p>15 Roe's [sic] buddy who drove, right?</p> <p>16 A. I think so.</p> <p>17 Q. And you had the names of what,</p> <p>18 three --</p> <p>19 A. I thought that was Doe's buddy.</p> <p>20 Q. You're right. Thank you. You</p> <p>21 had the name of Doe's buddy who drove, right?</p> <p>22 A. Yes.</p> <p>23 Q. You had the name of three of</p> <p>24 Roe's girlfriends; is that correct?</p>	<p style="text-align: right;">Page 228</p> <p>1 A. No.</p> <p>2 Q. So somebody else is calling her</p> <p>3 attention to that?</p> <p>4 A. Yes.</p> <p>5 Q. Ms. Roe and her friends went</p> <p>6 out drinking and to another party on Saturday</p> <p>7 night. Is that something that you would be</p> <p>8 interested learning about?</p> <p>9 A. I made my decision based on the</p> <p>10 information that I had.</p> <p>11 Q. So would it be fair to say that</p> <p>12 you didn't inquire any further as to what she</p> <p>13 and her friends did that Saturday?</p> <p>14 A. Correct.</p> <p>15 Q. You didn't seek to see any more</p> <p>16 text messages to put a time down as to how</p> <p>17 long they were exactly in that room?</p> <p>18 A. I asked her to give me all the</p> <p>19 text messages she had from that evening.</p> <p>20 Q. Okay. But in the statement to</p> <p>21 you she indicated that on her way from the</p> <p>22 LaSalle party to St. Mary's they were texting</p> <p>23 or she was texting her friends, did she not?</p> <p>24 MS. ENGLE: Objection to form.</p>
<p style="text-align: right;">Page 227</p> <p>1 A. Yes.</p> <p>2 Q. And one of them not only went</p> <p>3 to LaSalle with her but also met her outside;</p> <p>4 is that correct?</p> <p>5 A. I can't tell you right now</p> <p>6 whether the same girl who met her outside was</p> <p>7 at the party.</p> <p>8 Q. During your conversation with</p> <p>9 Ms. Roe did you ever ask what she did the next</p> <p>10 day?</p> <p>11 A. No.</p> <p>12 Q. Because she said she didn't</p> <p>13 observe any bruises until Sunday.</p> <p>14 A. Right.</p> <p>15 Q. Did she say somebody else</p> <p>16 observed the bruises on her?</p> <p>17 A. Yes. She said she was at the</p> <p>18 CVS with a friend and that she usually wears</p> <p>19 her hair long and that it was Sunday, so she</p> <p>20 had her hair pulled back and the friend that</p> <p>21 she was with saw the bruises.</p> <p>22 Q. Did Ms. Roe indicate that she</p> <p>23 saw the bruises in the mirror earlier that</p> <p>24 day?</p>	<p style="text-align: right;">Page 229</p> <p>1 THE WITNESS: I don't remember</p> <p>2 that.</p> <p>3 MS. ENGLE: This is before she</p> <p>4 left?</p> <p>5 THE WITNESS: She says "We were</p> <p>6 texting friends in car."</p> <p>7 BY MR. SCHWABENLAND:</p> <p>8 Q. But you didn't get any of that?</p> <p>9 A. That could be the one you</p> <p>10 showed me before, with the guy with the coke</p> <p>11 here. I don't know.</p> <p>12 Q. No. That was before they left.</p> <p>13 A. She's not here, so I can't ask</p> <p>14 her that. I don't know.</p> <p>15 Q. After your meeting with him did</p> <p>16 you speak with anybody at St. Joe's before you</p> <p>17 submitted your report?</p> <p>18 MR. MYERS: About this case?</p> <p>19 MR. SCHWABENLAND: Yes.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. SCHWABENLAND:</p> <p>22 Q. Have you handled any other</p> <p>23 cases similar to this at St. Joe's, where you</p> <p>24 investigated a couple kissing and then</p>

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<p style="text-align: right;">Page 230</p> <p>1 somebody hurting the neck or exerting too much 2 pressure on the neck? 3 A. Not that I remember, no. 4 Q. So I take it this was the first 5 of its kind in the time that you were dealing 6 with St. Joe's? 7 A. One of my colleagues, Andy 8 Rolfes, had one that had some similar 9 connotations. I personally did not do that. 10 Q. Do you know which one it was? 11 A. This list has nothing on it. I 12 can't tell you. 13 Q. Do you know the circumstances, 14 where you say similar connotations? 15 A. I think it was much more 16 complicated, in that it had a lot of 17 allegations, but part of it was choking, 18 squeezing the neck. 19 Q. Okay. And do you know what the 20 findings were in that? 21 A. I do not. Let me correct that. 22 I had nothing to do with the investigation, I 23 didn't read the report, but I think it was, 24 like, substantiated in part, responsible in</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. Let me go through your findings 2 of fact, if I could. 3 A. Let me correct that. I am not 4 sure its intent, but the intent is part of the 5 element of the consent analysis. But I did 6 specifically find I didn't think he had the 7 intent to hurt her. 8 Q. You found he didn't have the 9 intent to harm her, right? 10 A. Correct. 11 Q. He has to know that he's doing 12 something without consent or permission, 13 right? 14 A. I disagree with that. 15 Q. Okay. How does intent play in 16 your analysis, then? 17 A. I don't know what your question 18 is. 19 Q. You're familiar with crimes 20 code and -- 21 A. I mean, you don't need to 22 intend to sexually assault somebody. You 23 don't need to intend to harm. 24 Q. Let me ask you this: If they</p>
<p style="text-align: right;">Page 231</p> <p>1 part, but I can't be any more specific than 2 that. 3 Q. But you are not sure about 4 that? 5 A. Right. 6 Q. I am looking at this response 7 of investigator to the appeal, whatever that 8 exhibit number is. What did you mean by the 9 fact that she had a bruise on her neck was not 10 a deciding factor? What did you mean by that, 11 if you can remember? 12 A. It goes back to the 13 nonconsensual sexual touching. A bruise isn't 14 a requirement or a definition in the policy of 15 nonconsensual sexual touching. 16 Q. Okay. Do you believe that 17 there has to be some type of intent, he has to 18 know what he's doing? 19 A. I don't understand your 20 question. Intent to hurt or intent to touch 21 or intent to squeeze? 22 Q. Intent to touch in such a way 23 that he knew he didn't have permission for? 24 A. Yes.</p>	<p style="text-align: right;">Page 233</p> <p>1 were kissing and holding onto each other and 2 he accidentally tripped her and she hurt 3 herself, would that still be sexual assault? 4 A. That is hypothetical. Makes no 5 sense. He accidentally tripped her and -- 6 Q. Something untoward happened 7 that she felt pressure that she didn't like 8 and at least he says, "I didn't" -- he didn't 9 see that, right? 10 A. You've lost me. 11 Q. Okay. Well, let's go to your 12 findings and then I will come back to this. 13 A. Okay. 14 Q. In the findings of fact -- I am 15 at 274. Number one, they met at a party, 16 right? 17 A. Yes. 18 Q. Number two, "At least initially 19 she said he was a decent guy, because he was 20 polite to her and her friends and encouraged 21 her not to purchase cocaine from a drug dealer 22 outside the party;" is that correct? 23 A. That's what it says. 24 Q. So at least your findings at</p>

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<p style="text-align: right;">Page 234</p> <p>1 that point was that he was looking out for her 2 interest and being polite? 3 A. I wouldn't go that far, but you 4 just read the sentence. 5 Q. Were they all positive things? 6 Would you go at least that far? 7 A. Yes. 8 Q. It said that they both kissed 9 at the party, which was consensual; is that 10 correct? 11 A. Yes. 12 Q. There's nothing on the findings 13 of fact to talk about how they were kissing or 14 caressing each other, right? 15 A. Correct. 16 Q. Then, number four, you have 17 down, "Doe asked Roe if she wanted to come 18 back to St. Mary's where he lived. She said 19 yes. She went with him in the car driven by 20 Doe's friend;" is that correct? 21 A. Yes. 22 Q. And so they get back to St. 23 Mary's, this is number five, "Doe told Roe 24 that his roommate was asleep but the two of</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. So at least the kissing she had 2 consented to and the touching of the neck or 3 head during that kissing process she had 4 consented to, right? 5 A. Well, you have to read the 6 document as a whole. I think I say that the 7 consent does not -- if you get to the 8 analysis, consent does not require, you know, 9 "Can I touch your cheek? Can I touch your 10 ear?" 11 Q. We'll go through that. 12 A. Okay. Well, you're asking me a 13 question that calls for the whole report. 14 Q. But if he is touching her neck, 15 not squeezing her neck, if he's touching her 16 neck while he's kissing her that's all part of 17 the consent with kissing; is that correct? 18 MR. MYERS: I object to the 19 form. You're asking a hypothetical as 20 if it's a fact. You can answer the 21 question. 22 THE WITNESS: My report says 23 she did not consent to him squeezing 24 her neck.</p>
<p style="text-align: right;">Page 235</p> <p>1 them could go up to the third floor." Number 2 six, "The two of them went to a small room on 3 the third floor of St. Mary's. They were 4 mutually kissing, which Roe consented to." 5 And so far everything is fine, right? 6 A. I don't know if everything is 7 fine, but -- 8 Q. Is there -- 9 A. We are reading along as I have 10 written here. 11 Q. Up until six is there any 12 indication of sexual assault? 13 A. No. 14 Q. Okay. Number seven, "Doe 15 continued to kiss Roe and put his hand around 16 her throat and squeeze her neck. Roe 17 consented to the kissing. Doe did not obtain 18 Roe's consent to squeeze her neck and she did 19 not consent to that." Did I read that 20 correctly? 21 A. Yes. 22 Q. But there is nothing in there 23 about his hand already being on her neck? 24 A. Correct.</p>	<p style="text-align: right;">Page 237</p> <p>1 BY MR. SCHWABENLAND: 2 Q. That's not my question. My 3 question is, from your interview you learn 4 that they are kissing and the kissing process 5 involves them both caressing each other's neck 6 and head; is that correct? 7 A. Yes. 8 Q. So that's all consensual, the 9 touching of the neck, the head, and the 10 kissing is consensual so far, right? 11 A. I think if you read the rest of 12 the report I say the definition of consent -- 13 you're just arguing with me -- but the 14 definition of consent does not require 15 individual consents for "Can I touch this part 16 of your face? Can I touch this part of your 17 face?" 18 Q. So it's consensual? 19 A. I can't answer that question. 20 That is my analysis at the end. 21 Q. Okay. Then you say on number 22 eight, "She said something like 'What the F' 23 and Doe pulled away from her. She was 24 frightened because she in the past had been in</p>

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<p style="text-align: right;">Page 238</p> <p>1 an abusive relationship and she thought the 2 look in Doe's eyes was scary." Is that what 3 you said? 4 A. Yes. 5 Q. Okay. So at the point where 6 she alerts him that at least something is 7 wrong with her by her saying "What the F," he 8 pulls immediately away and stops that, right? 9 A. Yes. 10 Q. In your analysis is that the 11 first time that he is realizing that she 12 doesn't like something? 13 A. Yes. 14 Q. Had she not said that or 15 alerted him that you shouldn't be doing 16 something or you're applying too much 17 pressure, would he have had any notice that he 18 was doing something wrong? 19 A. No, but that's not required by 20 the policy. 21 Q. Did you look at this as at what 22 point is consent withdrawn? 23 A. No, because there was no 24 consent to squeezing.</p>	<p style="text-align: right;">Page 240</p> <p>1 read my whole report. 2 BY MR. SCHWABENLAND: 3 Q. Okay. So that is just not 4 automatic sexual assault, right? 5 A. You have to consider all the 6 facts in my whole analysis. 7 Q. Okay. 8 A. None of these are based on one 9 sentence. 10 Q. I understand. But you're 11 making findings of fact that you feel are 12 important? 13 A. Yes. 14 Q. Okay. You say in number nine, 15 "Doe left the room. Roe text a friend who 16 then called her. When Doe returned to the 17 room Roe was on the phone. She told him she 18 had to leave because her friend needed her. 19 Doe walked Roe outside where her friend was 20 waiting." That's something the two agreed on, 21 right? 22 A. Yes. 23 Q. By the way, do you know what 24 the safe word was that she text?</p>
<p style="text-align: right;">Page 239</p> <p>1 Q. Well, your impression was that 2 the squeezing of the neck was very fast when 3 she said, "What the F" and he pulled away, 4 right? 5 A. Yes. I don't know if I would 6 say very fast, but he pulled away when she 7 said "What the F." 8 Q. Did you ever try to analyze -- 9 did you ever in your discussion with her try 10 to determine what was the nature of the 11 squeeze, how much pressure he was putting on 12 her, because it was momentary? Did you ever 13 try to get into that? 14 A. No. She said it hurt, though, 15 and it scared her. 16 Q. Okay. So if he hurts her in 17 the process of touching her neck and now it's 18 a squeeze she's reporting, that's automatic 19 sexual assault? 20 MS. ENGLE: Object to form. 21 MR. MYERS: Object to the form 22 of the question. You may answer the 23 question if you can. 24 THE WITNESS: No. You have to</p>	<p style="text-align: right;">Page 241</p> <p>1 A. No. She used the word "safe 2 word," but it's, like, call or text your 3 friend. If you go back to my interview with 4 her, then the girl calls her, calls Roe and 5 Roe says, "I am okay." That's part of the 6 whole safe conversation. You know, you 7 wouldn't say in a situation, "Oh, my God. 8 Come get me." You say, "I'm okay" and that's 9 the code word for somebody to come pick you 10 up. She did explain all that to me. 11 Q. There is a statement in one of 12 the texts where she refers to "I'm Ms. 13 Francis." That's F-R-A-N-C-I-S. Do you know 14 anything about that? 15 A. No. 16 Q. Number ten, "Later at 2:39 a.m. 17 Doe text Roe, 'I am going to bed, but you guys 18 need anything my phone will be on. I hope ur 19 friend's okay'." And Number 11, "Although I 20 find that Doe squeezed Roe's neck area and it 21 left bruises I do not find that he did it with 22 the intention to hurt," right? 23 A. Correct. 24 Q. And so that's where you</p>

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<p style="text-align: right;">Page 242</p> <p>1 disagree with Roe, Roe felt he was trying to 2 hurt her? 3 A. Well, I asked her why she 4 thought he did it and, you know, I often ask 5 that question and people have all different 6 kinds of answers. She thought it was to hurt 7 her and when I interviewed him I came to the 8 conclusion that he had no intention on that. 9 Q. Then you determine of 10 credibility. "I found both Roe and Doe to be 11 credible. Doe does not specifically recall 12 squeezing Ms. Roe's neck, but he does not deny 13 it and says they both had their hands on each 14 other's neck area. He agrees that he did not 15 obtain Ms. Roe's consent to touch her neck," 16 but he did have consent to touch her neck; is 17 that correct? 18 A. I disagree with that. You have 19 to look at my whole analysis. I don't think 20 that the consent -- individual consent for 21 this touch, this touch, this touch is 22 necessary. But under the policy, in order to 23 obtain consent it is the responsibility of the 24 initiator of the sexual contact to get consent</p>	<p style="text-align: right;">Page 244</p> <p>1 that part didn't matter based on my analysis 2 that it was the squeeze and not the touch. 3 Q. So let me go back. If I 4 understand from your investigation, Doe said 5 that they were both kissing and caressing and 6 touching each other's neck and head; am I 7 correct on that? 8 A. Yes. 9 Q. And you did not cover that with 10 Roe, so there was no denial of that by Roe? 11 A. I'd have to go back and look at 12 all my notes to determine what I covered. 13 Q. Okay. Did she comment on that 14 one way or another? That seems pretty 15 important. 16 A. What is your question? 17 MR. SCHWABENLAND: Read it 18 back, if you could. 19 --- 20 (Whereupon, the court reporter 21 read back from the record.) 22 --- 23 MR. MYERS: I object to the 24 form of the question. You can answer</p>
<p style="text-align: right;">Page 243</p> <p>1 from the recipient of the sexual contact in 2 words or actions that are not ambiguous. 3 Q. Was the sexual contact the 4 squeezing of the neck or was it the kissing 5 and caressing, the touching of the neck and 6 head while the kissing was going on? 7 A. My conclusion is it was the 8 squeezing of the neck had no consent. 9 Q. The sexual contact was the 10 squeezing of the neck? 11 A. The sexual contact is the 12 squeezing in the content of kissing. 13 Q. But when you say "He agrees 14 that he did not obtain Ms. Roe's consent to 15 touch her neck" shouldn't you have put in 16 there "to squeeze her neck"? 17 A. He didn't have consent to touch 18 her neck either. That was my ultimate 19 conclusion, but he did not, as the initiator 20 of the sexual contact, follow the procedure to 21 get the consent of the recipient of the 22 contact in words or actions which are 23 unambiguous, that we both understand that we 24 are going to do this. I found in the end that</p>	<p style="text-align: right;">Page 245</p> <p>1 it if you can. 2 THE WITNESS: If we go back to 3 the very beginning of what the 4 complaint is, the complaint is what 5 she believes is not consensual is the 6 squeezing. 7 BY MR. SCHWABENLAND: 8 Q. Squeezing of the neck? 9 A. Right. 10 Q. I understand that. But she 11 didn't object to him touching her neck or her 12 touching his neck, right? 13 A. Touching, but not squeezing? 14 Q. Yes. 15 A. Correct. 16 Q. I understand squeezing, but -- 17 A. Sort of have to touch to 18 squeeze, though, but I understand. 19 Q. And if you don't squeeze you 20 can still touch the neck while you're kissing, 21 right? 22 A. Yes. 23 Q. So he did have consent to touch 24 her neck?</p>

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<p style="text-align: right;">Page 246</p> <p>1 A. I disagree. That was not part 2 of her complaint so I didn't need to do an 3 analysis of that, but he did not have consent 4 to touch her neck. 5 Q. So any touching of the neck 6 while they're at LaSalle, where they are 7 caressing the head or neck, that's without her 8 consent? 9 A. She didn't make -- she was not 10 claiming that, so I didn't have a reason to 11 analyze that. 12 Q. I'll represent to you that 13 Ms. Roe, who has partially been deposed, has 14 stated that up until the time that he actually 15 squeezed the neck he had permission to touch 16 her neck and touch her head and to kiss her 17 during that process. 18 MR. MYERS: I object to the 19 form of the question. What is the 20 question? 21 BY MR. SCHWABENLAND: 22 Q. Does that make a difference in 23 your analysis? 24 A. No, because her complaint is</p>	<p style="text-align: right;">Page 248</p> <p>1 was that he squeezed her neck while 2 kissing her. 3 BY MR. SCHWABENLAND: 4 Q. Let's go to the rationale. The 5 definition of sexual assault under the policy 6 includes, "Any nonconsensual sexual contact, 7 including any improper touching of intimate 8 body parts" and you cite the section. "While 9 a person's neck/throat area is not an intimate 10 body part, in this situation Doe squeezed 11 Roe's neck/throat while he was kissing her. 12 In this situation, therefore, under all the 13 circumstances I find that the touching is 14 sexual assault [sic]." 15 A. Sexual contact. 16 Q. Sexual contact. Thank you. 17 And so the touching of the neck, squeezing it 18 is sexual contact? 19 A. While kissing her. 20 Q. Okay. So the whole thing is 21 sexual contact? 22 A. Squeezing of the neck while 23 kissing her. If I jumped across the table and 24 squeezed your neck, that might be a criminal</p>
<p style="text-align: right;">Page 247</p> <p>1 the squeezing. 2 Q. I understand. 3 A. So it doesn't make a difference 4 in my analysis. 5 Q. So what you're saying is that 6 he never had consent to touch her neck at all? 7 A. Yes. I don't think that was 8 imperative for my analysis, as I have 9 explained to you, because she didn't make -- 10 that was not part of her complaint. 11 Q. But if he has a hand in the 12 area that he is permitted to touch, the issue 13 then becomes, is too much pressure being 14 exerted when the squeeze happened, right? Do 15 you agree with that? 16 MS. ENGLE: Object to the form. 17 MR. MYERS: I object to the 18 form of the question and that you have 19 asked this question in various forms a 20 half a dozen times at this point at 21 4:10 p.m. You can answer the 22 question. 23 THE WITNESS: All I can say is 24 her complaint that I was investigating</p>	<p style="text-align: right;">Page 249</p> <p>1 assault, but it would not be a sexual assault. 2 So I found it was the squeezing while kissing 3 was sexual contact. 4 Q. "I also find that Doe did not 5 obtain consent to squeeze her neck area. 6 Ms. Roe consented to the kissing, which 7 involved Doe touching her in various ways in 8 her neck and face area. The policy does not 9 require separate affirmative consent for each 10 action of kissing on the face (left side, 11 right side, forehead, et cetera). Consent to 12 kissing also understandably involves some 13 contact by Doe's hand on the neck and throat 14 area." Do you agree with that? 15 A. Yes. 16 Q. "However, because Roe's 17 complaint is that Doe squeezed her neck to the 18 point where it left bruises I find that this 19 is a singular, separate act which required her 20 consent. This analysis of consent is totally 21 dependent on the circumstances presented 22 here." Did I read that correctly? 23 A. I wasn't following you the 24 whole time, so I can't answer that.</p>

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<p style="text-align: right;">Page 250</p> <p>1 Obviously, the document speaks for itself.</p> <p>2 Q. So, basically, what you're</p> <p>3 saying is that before the squeeze he should</p> <p>4 have asked for permission to squeeze her neck?</p> <p>5 MS. ENGLE: Object to the form.</p> <p>6 THE WITNESS: That question</p> <p>7 makes no sense.</p> <p>8 BY MR. SCHWABENLAND:</p> <p>9 Q. You said he did not have</p> <p>10 consent to squeeze her neck, right?</p> <p>11 A. Correct.</p> <p>12 Q. It says here, "I find that</p> <p>13 this" -- that is the squeezing of the neck --</p> <p>14 "is a singular, separate act which requires</p> <p>15 her consent." So are you saying that before</p> <p>16 squeezing the neck he should have said, "By</p> <p>17 the way, can I squeeze your neck"?</p> <p>18 A. Or something like that, yes.</p> <p>19 Two questions back didn't make sense because</p> <p>20 you had the genders reversed.</p> <p>21 Q. Going back to the first page</p> <p>22 here, 268, I am going back to the sexual</p> <p>23 misconduct policy definition of sexual</p> <p>24 assault, which starts off -- I am going to</p>	<p style="text-align: right;">Page 252</p> <p>1 without permission, right?</p> <p>2 A. I don't know what case you're</p> <p>3 talking about. Is that a hypothetical</p> <p>4 question?</p> <p>5 Q. No. I will see if I can find</p> <p>6 it. I can't find it. I apologize. In 2017</p> <p>7 are you aware that the university obtained a</p> <p>8 federal grant?</p> <p>9 A. Yes.</p> <p>10 Q. And did you play any part in</p> <p>11 providing any information or submitting</p> <p>12 paperwork for the grant?</p> <p>13 A. No. I found out about it from</p> <p>14 the student newspaper, I think.</p> <p>15 Q. And then we get back to</p> <p>16 September of 2017. There was a Dear Colleague</p> <p>17 Letter and questions and answers submitted by</p> <p>18 the Office of Civil Rights; is that correct?</p> <p>19 A. Yes. I don't believe that's</p> <p>20 called a Dear Colleague Letter, but I am aware</p> <p>21 in September 2017 the guidance that came out.</p> <p>22 I thought the old one was always called the</p> <p>23 Dear Colleague Letter. That's how people</p> <p>24 referred to it, right.</p>
<p style="text-align: right;">Page 251</p> <p>1 leave out sexual intercourse, because this</p> <p>2 does not involve sexual intercourse, so</p> <p>3 "Having sexual physical contact with another</p> <p>4 individual by the use of threat or force or</p> <p>5 coercion without consent or where the</p> <p>6 individual is incapacitated." So in this case</p> <p>7 here she wasn't incapacitated, right?</p> <p>8 A. Right.</p> <p>9 Q. And it has to be either with</p> <p>10 the use of threat or force or coercion and</p> <p>11 without consent?</p> <p>12 A. That's not true. You're</p> <p>13 reading a soundbite from the policy. I was</p> <p>14 looking at the next definition, which says,</p> <p>15 "The policy also provides that sexual assault</p> <p>16 includes nonconsensual sexual contact, which</p> <p>17 is defined as follows" and there's no</p> <p>18 requirement of force or coercion or threat.</p> <p>19 There is multiple definitions in the policy.</p> <p>20 Q. There is another case that was</p> <p>21 submitted where a guy goes up to a girl, puts</p> <p>22 both hands up against the wall and kisses her</p> <p>23 without asking for permission, and that would</p> <p>24 be sexual assault because that kiss was</p>	<p style="text-align: right;">Page 253</p> <p>1 Q. Okay.</p> <p>2 -- --</p> <p>3 (Whereupon, Exhibits Malloy-11</p> <p>4 and 12 were marked for purposes of</p> <p>5 identification.)</p> <p>6 -- --</p> <p>7 BY MR. SCHWABENLAND:</p> <p>8 Q. For the record, I've identified</p> <p>9 the September 22nd, 2017 two-page letter as</p> <p>10 Exhibit-11. It's to Dear Colleague. It's</p> <p>11 from the United States Department of</p> <p>12 Education, Office of Civil Rights. Exhibit-12</p> <p>13 is the Q&A that accompanied this letter, or</p> <p>14 shortly thereafter, in September 2017. Look</p> <p>15 that over and let me know if you have seen</p> <p>16 that.</p> <p>17 A. I have seen it before. I would</p> <p>18 need to reread it all if you are going to ask</p> <p>19 me a lot of specific questions, but I have</p> <p>20 seen this before.</p> <p>21 Q. I am going to ask you some</p> <p>22 questions, so feel free to --</p> <p>23 A. Okay.</p> <p>24 Q. When was the last time you saw</p>

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<p style="text-align: right;">Page 254</p> <p>1 this letter, these two documents?</p> <p>2 A. Probably about six weeks ago.</p> <p>3 Q. And what occasioned you to look</p> <p>4 at that six weeks ago?</p> <p>5 A. I think I saw something that --</p> <p>6 I think these say that they are going to issue</p> <p>7 rule making or something like that and I saw</p> <p>8 something about rule making and I just went</p> <p>9 back and looked at them again.</p> <p>10 Q. Did you say "rule making"?</p> <p>11 A. I thought these ended with</p> <p>12 something else was coming out, right. These</p> <p>13 are just guidance and I thought it said</p> <p>14 something else was coming out and I saw a</p> <p>15 reference to something else may be coming out</p> <p>16 or not coming out and I just happened to go</p> <p>17 back and look at them again.</p> <p>18 Q. All right. So these are</p> <p>19 guidelines, recommended guidelines?</p> <p>20 A. It's my understanding, yes.</p> <p>21 Not guidelines, guidance.</p> <p>22 Q. Okay. How do you distinguish</p> <p>23 the two?</p> <p>24 A. I think guidelines are more</p>	<p style="text-align: right;">Page 256</p> <p>1 in any way, they are just guidance,</p> <p>2 and that various educational</p> <p>3 institutions can change their policies</p> <p>4 or procedures if they wish.</p> <p>5 BY MR. SCHWABENLAND:</p> <p>6 Q. So --</p> <p>7 A. I gave no opinion on that to</p> <p>8 anyone.</p> <p>9 Q. So institutions of higher</p> <p>10 learning could either accept or reject their</p> <p>11 recommendations; is that your understanding as</p> <p>12 a lawyer?</p> <p>13 MR. MYERS: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. SCHWABENLAND:</p> <p>16 Q. So is there any benefit to</p> <p>17 complying with the recommendations or</p> <p>18 guidance?</p> <p>19 MR. MYERS: Object to the form</p> <p>20 of the question. You can answer if</p> <p>21 you know.</p> <p>22 THE WITNESS: I can't answer</p> <p>23 that.</p> <p>24</p>
<p style="text-align: right;">Page 255</p> <p>1 formal than guidance.</p> <p>2 Q. And as part of --</p> <p>3 A. It says, "These guidance</p> <p>4 documents."</p> <p>5 Q. Okay. Exhibit-11 is a Dear</p> <p>6 Colleague Letter; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And the Q&As that come out, is</p> <p>9 it necessary to try to comply with these</p> <p>10 guidance or recommendations being made?</p> <p>11 MR. MYERS: Objection.</p> <p>12 Objection to the form. Are you asking</p> <p>13 whether there were some that say see</p> <p>14 with respect to the September 2017 Q&A</p> <p>15 or are you asking some different</p> <p>16 question?</p> <p>17 MR. SCHWABENLAND: I asked her</p> <p>18 one question.</p> <p>19 MR. MYERS: Okay. I object.</p> <p>20 If you can answer it, you answer it.</p> <p>21 THE WITNESS: I do not give</p> <p>22 legal advice to St. Joe's about their</p> <p>23 policies. My understanding as a</p> <p>24 lawyer is that these are not mandatory</p>	<p style="text-align: right;">Page 257</p> <p>1 BY MR. SCHWABENLAND:</p> <p>2 Q. Now, you said you looked at</p> <p>3 this six weeks ago. Let me follow that up.</p> <p>4 You said you thought rules were coming out.</p> <p>5 What information had you received that rules</p> <p>6 were coming out?</p> <p>7 A. It's just in something I read.</p> <p>8 But I distinctly remember when these came out</p> <p>9 and I thought -- I mean, it might be in here</p> <p>10 if you let me read all 25 pages.</p> <p>11 Q. Sure.</p> <p>12 A. I thought that there was going</p> <p>13 to be a next step.</p> <p>14 MR. MIRABELLA: Take a break</p> <p>15 while she's reading?</p> <p>16 MR. SCHWABENLAND: Sure.</p> <p>17 Five-minute break and then we'll</p> <p>18 finish up.</p> <p>19</p> <p>20 (Whereupon, a recess was held</p> <p>21 from 4:25 p.m. to 4:30 p.m.)</p> <p>22</p> <p>23 BY MR. SCHWABENLAND:</p> <p>24 Q. Did you look those over?</p>

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<p style="text-align: right;">Page 258</p> <p>1 A. I did. So Exhibit-12 says in 2 the first paragraph, "The Department of 3 Education intends to engage in rule making on 4 the topic of schools' Title IX 5 responsibilities." And my best recollection 6 is that I read some sort of article six weeks 7 ago about -- I don't know if it was the Trump 8 Administration in general not being able to 9 get out rule making or push agendas forward, 10 but this guidance was mentioned in it and it 11 just triggered me and I went back and read it 12 again -- or looked at it again. I didn't read 13 it all. 14 Q. So do you recall what caught 15 your eye on any of this or you don't know? 16 A. No, nothing in particular. I 17 have read it a couple of times. 18 Q. Before six weeks ago when was 19 the last time you reviewed this for any 20 reason? 21 A. I read it when it came out. I 22 may have looked at it in between. 23 Q. But do you have any 24 recollection of doing that in between?</p>	<p style="text-align: right;">Page 260</p> <p>1 schools have established procedures for 2 revolving allegations that 'lack the most 3 basic elements of fairness and due process, 4 are overwhelmingly stacked against the 5 accused, and are in no way required by Title 6 IX law or regulations'." There's another 7 footnote. First of all, did I read that 8 paragraph correctly? 9 A. Yes. 10 Q. And did you take note of that 11 when you reviewed, at least the comments that 12 were made in that paragraph? 13 A. I am sure I took note of the 14 whole thing. 15 Q. Did you agree or disagree with 16 that statement, especially the one, "that lack 17 the most basic elements of fairness and due 18 process, are overwhelmingly stacked against 19 the accused, and are in no way required by 20 Title IX law or regulations?" 21 A. I have no opinion on it at all. 22 Q. Did you ever talk with anybody 23 at the university when this letter came out 24 about recommendations?</p>
<p style="text-align: right;">Page 259</p> <p>1 A. Not specifically, no. 2 Q. Okay. Let me ask you to go to 3 the Dear Colleague Letter, Exhibit-11, I 4 believe. At the very beginning it indicates 5 that "The Department of Education is 6 withdrawing the statements of policy and 7 guidance reflected in the following documents" 8 and one is the Dear Colleague Letter of 9 April 4, 2011 and the other one is a question 10 and answer on Title IX and sexual violence 11 dated April 29, 2014. Did I paraphrase that 12 correctly? 13 A. Yes. 14 Q. Okay. This is in two pages 15 here, but I want to call your attention to the 16 paragraph -- the third paragraph down starting 17 with "Legal commentators." 18 A. Yes. 19 Q. It says, "Legal commentators 20 have criticized the 2011 letter and the 2014 21 questions and answers for placing 'improper 22 pressure upon universities to adopt procedures 23 that do not afford fundamental fairness'." 24 There is a footnote there. "As a result many</p>	<p style="text-align: right;">Page 261</p> <p>1 A. No. 2 Q. Did you ever consider your own 3 investigative protocol that you followed on 4 behalf of the university concerning claims of 5 Title IX sexual misconduct policy violations 6 to see if you wanted to change anything as to 7 the protocol that you were following? 8 MR. MYERS: I object to the 9 form of the question. I don't think 10 you've accurately characterize the 11 sexual misconduct policy of St. Joe's. 12 You can answer the question if you 13 want. 14 THE WITNESS: No, I had no 15 discussion with anybody about these. 16 BY MR. SCHWABENLAND: 17 Q. Okay. So let me ask you to go 18 to Exhibit-12, the question and answer or Q&A 19 on campus sexual misconduct and, more 20 specifically, let me ask you to go to Page 3 21 of that exhibit, the very end. It's question 22 six, "What constitutes an equitable 23 investigation?" And the answer that they put 24 out starts off by saying, "In every</p>

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<p style="text-align: right;">Page 262</p> <p>1 investigation conducted under the school's</p> <p>2 grievance procedures the burden is on the</p> <p>3 school, not on the parties, to gather</p> <p>4 sufficient evidence to reach a fair and</p> <p>5 impartial determination as to whether sexual</p> <p>6 misconduct has occurred and, if so, whether a</p> <p>7 hostile environment has been created that must</p> <p>8 be redressed." Did I read that part</p> <p>9 correctly?</p> <p>10 A. Yes.</p> <p>11 Q. And did you agree with that?</p> <p>12 A. I have no opinion. It's just a</p> <p>13 government document. I mean, I have no</p> <p>14 opinion on sentences in government documents.</p> <p>15 I read regulations, guidance, cases for a</p> <p>16 living.</p> <p>17 Q. So did you ever consider the</p> <p>18 burden that the school has?</p> <p>19 A. I think we talked about this</p> <p>20 before.</p> <p>21 Q. We did.</p> <p>22 A. I told you that I do personally</p> <p>23 consider that it is not the complainant's</p> <p>24 burden but that it is the school's burden.</p>	<p style="text-align: right;">Page 264</p> <p>1 thought process on that and what I told him.</p> <p>2 Q. If I understand correctly, John</p> <p>3 Doe had indicated that at the</p> <p>4 pre-investigative stage he was told that it</p> <p>5 involved something to do with roughness. Did</p> <p>6 I state that correctly?</p> <p>7 A. That's what he told me.</p> <p>8 Q. Okay. But at that point he</p> <p>9 didn't know where or anything else, right?</p> <p>10 A. I don't know.</p> <p>11 Q. And --</p> <p>12 A. He wrote those text messages,</p> <p>13 if you remember that text message that he sent</p> <p>14 me, that he wondered if he was too forceful or</p> <p>15 aggressive.</p> <p>16 Q. I understand, but at a certain</p> <p>17 point -- I'm sorry. You keep saying text</p> <p>18 message. He handed a piece of paper to you at</p> <p>19 the time that you met, right?</p> <p>20 A. Yes, and it was from his phone.</p> <p>21 Q. Okay. And that's where he</p> <p>22 really speculated, "Well, maybe, I pushed her</p> <p>23 into the chair"?</p> <p>24 A. I disagree.</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. It says here, going two</p> <p>2 paragraphs down, "Any rights or opportunities</p> <p>3 that a school makes available to one party</p> <p>4 during the investigation should be made</p> <p>5 available to the other party on equal terms."</p> <p>6 Do you agree with that?</p> <p>7 A. I have no opinion. I do not</p> <p>8 form opinions on stuff people write.</p> <p>9 Q. Okay. But in terms of your</p> <p>10 practical application of these</p> <p>11 recommendations, did you consider, "Well, if</p> <p>12 the complainant gets a copy of the complaint</p> <p>13 to review shouldn't the respondent have a copy</p> <p>14 of that to review," not to keep but to review?</p> <p>15 A. I did not consider that. I</p> <p>16 told John what the charges were against him.</p> <p>17 Q. You told John Doe?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So did you consider</p> <p>20 allowing him to look at that complaint?</p> <p>21 A. I don't recall having a</p> <p>22 consideration like that in my mind. I</p> <p>23 described to him, for all the reasons we've</p> <p>24 talked about for the last seven hours, my</p>	<p style="text-align: right;">Page 265</p> <p>1 Q. Okay. Did he comment on that</p> <p>2 in that piece of paper he gave you?</p> <p>3 A. Yes.</p> <p>4 Q. And you told him that the claim</p> <p>5 was that -- the claim by Ms. Roe was that he</p> <p>6 squeezed her neck, right?</p> <p>7 A. Yes.</p> <p>8 Q. Did you tell him that Ms. Roe</p> <p>9 was claiming that she felt he wanted to harm</p> <p>10 her?</p> <p>11 A. I don't think so.</p> <p>12 MS. ENGLE: Objection.</p> <p>13 BY MR. SCHWABENLAND:</p> <p>14 Q. Did you tell him that Ms. Roe</p> <p>15 was claiming he choked her to the extent that</p> <p>16 she couldn't breathe?</p> <p>17 A. I told him that she said --</p> <p>18 that she said that it hurt and that she was</p> <p>19 scared and that's why she texted her friend.</p> <p>20 I don't think I said "couldn't breathe."</p> <p>21 Q. Okay. So you didn't mention</p> <p>22 anything that she was claiming he choked her</p> <p>23 or that she couldn't breathe because of that?</p> <p>24 A. I told you what I told him.</p>

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<p style="text-align: right;">Page 266</p> <p>1 Q. Okay. And it doesn't include 2 those two statements? 3 A. I didn't use the word "choked." 4 Q. Okay. Did you use the words 5 that because of whatever she complained about 6 she could not breathe? 7 A. No. 8 Q. The fourth paragraph down 9 states, "Once it decides to open an 10 investigation that may lead to disciplinary 11 action against the responding party, a school 12 should provide written notice to the 13 responding party of the allegations 14 constituting a potential violation of the 15 school's sexual misconduct policy, including 16 sufficient details and with sufficient time to 17 prepare a response before any initial 18 interview." Do you agree or disagree with 19 that? 20 A. I have no opinion. 21 Q. Well, would you want to see 22 that sufficient details are provided to a 23 respondent before the meeting actually takes 24 place with you?</p>	<p style="text-align: right;">Page 268</p> <p>1 on this. 2 Q. No. I am asking you about, you 3 have a Dear Colleague Letter, you have a Q&A, 4 and you are the investigator on a case where, 5 as I understand, there is no requirements on 6 you to either give over evidence or not give 7 over evidence; is that correct? 8 A. Yes. 9 Q. And so they are coming -- 10 A. But there is an appeal 11 procedure and he sees everything there, et 12 cetera, and I told him he could come back to 13 me and I'd talk to him. 14 Q. Let me go back. You said 15 appeal procedure. Isn't that letting the fox 16 in the henhouse? Isn't that a little bit too 17 late? 18 A. I don't -- I disagree. 19 Q. What are the two criteria? 20 A. I am not involved in the appeal 21 procedure. 22 Q. Okay. 23 A. But the whole thing is a 24 process. You are only talking about part of</p>
<p style="text-align: right;">Page 267</p> <p>1 A. I don't think that's necessary. 2 Q. If you were the respondent 3 would you want to know what the charges are 4 against you in specificity? 5 A. Yes. 6 Q. And would you want to know what 7 evidence there is against you in specificity? 8 A. Probably. 9 Q. And you would want that 10 information before any meeting takes place 11 that could have adverse results on your stay 12 at the university; is that correct? 13 A. Yes, but that doesn't mean it's 14 required and it doesn't mean that somebody 15 didn't have sufficient notice. 16 Q. Well, we are talking about 17 fairness; is that correct? 18 A. You are talking about a 19 document that's guidance, not a requirement on 20 any school. 21 Q. But aren't they trying to give 22 these -- 23 A. I gave no legal advice. You're 24 questioning me like I am giving legal advice</p>	<p style="text-align: right;">Page 269</p> <p>1 it. 2 Q. I am trying to talk about the 3 steps here. The process that you're involved 4 with is a very important process; is that 5 correct? 6 A. Yes. 7 Q. You are the investigator; is 8 that correct? 9 A. Yes. 10 Q. You make the findings of fact; 11 is that correct? 12 A. Yes. 13 Q. And you make the conclusions of 14 either responsible, not responsible, or 15 undetermined, right? 16 A. Correct. 17 Q. Have you ever found 18 undetermined on any of these investigations? 19 I didn't see any. 20 A. I believe I have and it was 21 one -- I remember it. It was, like, a party 22 and the female complainant didn't know who 23 assaulted her or allegedly assaulted her, 24 couldn't give me any details on it. I could</p>

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<p style="text-align: right;">Page 270</p> <p>1 never determine what, if anything, happened. 2 I think that was -- it's possible I said not 3 responsible, but in my mind I am saying I said 4 undetermined. 5 Q. Okay. So -- 6 A. There was no named respondent. 7 Q. Okay. So getting back to what 8 may be fair or reasonable in terms of your 9 handling of cases, is there any reason not to 10 give a respondent access to the charges 11 against him and information about what 12 evidence there is against him before the 13 actual meeting takes place with him? 14 MR. MYERS: Object to the form 15 of the question. You can answer the 16 question. 17 THE WITNESS: I don't know. I 18 mean, probably not. But oftentimes or 19 times when you interview the 20 complainant the story is more 21 detailed, sometimes different. So at 22 that point, before I would -- you 23 know, before it gets out of the 24 Community Standards office, whatever</p>	<p style="text-align: right;">Page 272</p> <p>1 THE WITNESS: Like most 2 situations, her explanation to me was 3 more expansive than this complaint, 4 right, because Mary-Elaine Perry 5 doesn't really talk to people for an 6 hour. But the general allegation that 7 he squeezed her neck and it hurt did 8 not change. 9 BY MR. SCHWABENLAND: 10 Q. So in this case there was 11 really no reason not to allow him to review 12 this complaint beforehand? 13 A. I can't answer that. 14 Q. Let's go back to the paragraph 15 here, that fourth paragraph down. 16 A. I'm sorry. I lost your page. 17 Exhibit-12? 18 Q. Exhibit-12, Page 4. It's the 19 fourth paragraph down. I just finished 20 stating, "including sufficient details and 21 with sufficient time to prepare a response 22 before any initial interview." Then it goes 23 on to state what sufficient details include. 24 "Sufficient details include the identity of</p>
<p style="text-align: right;">Page 271</p> <p>1 the written complaint is, if any, can 2 change. But to answer your question, 3 probably not but I am not involved in 4 that process. 5 BY MR. SCHWABENLAND: 6 Q. Well, in this case did the 7 initial complaint in the form of the report of 8 Dr. Perry change at all in terms of your 9 interview with the complainant? 10 MR. MYERS: I object to the 11 form of the question. It's 12 argumentative. Ed, you are asking the 13 witness to do an oral comparison 14 between at least three documents, not 15 including the appeal. Really, 16 you're -- the documents are the 17 documents. The changes are the 18 changes. What this witness has to say 19 about what's in the documents is not 20 advancing anything and it's ten to 21 five. I would ask you to consider 22 asking a different question, please. 23 Silence means no, so you can answer 24 the question if you can.</p>	<p style="text-align: right;">Page 273</p> <p>1 the parties involved, the specific section of 2 the code of conduct allegedly violated, the 3 precise conduct allegedly constituting the 4 potential violation, and the date and location 5 of the alleged incident. Each party shall 6 receive written notice in advance of any 7 interview or hearing with sufficient time to 8 prepare for a meaningful participation and the 9 investigation should result in a written 10 report summarizing the relevant exculpatory 11 and inculpatory evidence. The reporting and 12 responding parties and appropriate officials 13 must have timely and equal access to any 14 information that will be used during informal 15 and formal disciplinary meetings and 16 hearings." First of all, did I read the rest 17 of that paragraph sufficiently? 18 A. Yes. 19 Q. And will you agree with me that 20 this is recommending that these sufficient 21 details which they identify should be given in 22 advance of any interview or hearing with 23 sufficient time to prepare for meaningful 24 participation?</p>

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<p style="text-align: right;">Page 274</p> <p>1 A. No.</p> <p>2 Q. Okay. It doesn't --</p> <p>3 A. The first of all, these are</p> <p>4 guidance, not guidelines, not mandatory. It</p> <p>5 says, "The precise conduct allegedly</p> <p>6 constituting the potential violation," which I</p> <p>7 think is different than what you just said.</p> <p>8 Q. Which you think what? I didn't</p> <p>9 hear.</p> <p>10 A. Is different from what you just</p> <p>11 said.</p> <p>12 Q. Is there any purpose in not</p> <p>13 turning over, in this case the complaint,</p> <p>14 pictures of bruises, and later any text</p> <p>15 messages to John Doe before your interview</p> <p>16 with him?</p> <p>17 A. I don't think the university</p> <p>18 has all that stuff.</p> <p>19 Q. Well, they had the complaint,</p> <p>20 right?</p> <p>21 A. They had the complaint.</p> <p>22 Q. Okay. Did they have the</p> <p>23 pictures?</p> <p>24 A. I don't believe so.</p>	<p style="text-align: right;">Page 276</p> <p>1 Q. Now, you said earlier, if I</p> <p>2 understand correctly, "Well, he had the</p> <p>3 ability to see these documents at the time of</p> <p>4 the appeal."</p> <p>5 A. I don't remember what your</p> <p>6 exact question was, but you were making the</p> <p>7 process sound different than it is, so that</p> <p>8 was my comment.</p> <p>9 Q. The process is, you get</p> <p>10 assigned to investigate and then you write up</p> <p>11 findings of fact, conclusions; is that</p> <p>12 correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. I'm sorry?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And so you are not only the</p> <p>17 investigator, you're the judge and jury on</p> <p>18 this case?</p> <p>19 MR. MYERS: I object to the</p> <p>20 form of the question. She is the</p> <p>21 investigator under a set of rules that</p> <p>22 are totally clear in the SMP, which is</p> <p>23 a document which speaks for itself.</p> <p>24 The judge and jury is just</p>
<p style="text-align: right;">Page 275</p> <p>1 Q. Didn't the university get the</p> <p>2 the pictures to you?</p> <p>3 A. No. Jane gave them to me.</p> <p>4 Q. So she gave you the pictures?</p> <p>5 A. She gave me the text messages.</p> <p>6 He gave me the notes, whatever you want to</p> <p>7 call them.</p> <p>8 Q. So she's giving you the text</p> <p>9 messages at the meeting?</p> <p>10 A. At the meeting or shortly</p> <p>11 thereafter.</p> <p>12 Q. Okay. And if you got it</p> <p>13 shortly thereafter did you contact John Doe to</p> <p>14 show it to him or tell him what they say so he</p> <p>15 could comment on them?</p> <p>16 A. No.</p> <p>17 Q. And why not?</p> <p>18 A. He agreed when he came back in</p> <p>19 the room she was on the phone with her friend</p> <p>20 and said she had to leave.</p> <p>21 Q. How about all the other text</p> <p>22 messages? Don't you think he would be</p> <p>23 entitled to see it?</p> <p>24 A. I have no opinion on that.</p>	<p style="text-align: right;">Page 277</p> <p>1 argumentative.</p> <p>2 BY MR. SCHWABENLAND:</p> <p>3 Q. You can answer.</p> <p>4 MR. MYERS: I am not going to</p> <p>5 let her answer that question.</p> <p>6 MR. SCHWABENLAND: You're</p> <p>7 telling her not to answer?</p> <p>8 MR. MYERS: Yes. Call a judge</p> <p>9 right now. Say, "Don't I get to say</p> <p>10 was she judge or jury?" Go ahead.</p> <p>11 MR. SCHWABENLAND: You're</p> <p>12 getting testy, John.</p> <p>13 MR. MYERS: I am getting testy.</p> <p>14 BY MR. SCHWABENLAND:</p> <p>15 Q. Well, you make the final</p> <p>16 decision as to responsible or not responsible,</p> <p>17 right?</p> <p>18 A. I apply the findings of fact</p> <p>19 that I make to the policy and determine</p> <p>20 whether the policy is violated or not.</p> <p>21 Q. And that's the final decision</p> <p>22 on that, right?</p> <p>23 A. I don't know.</p> <p>24 Q. Well, have you ever been</p>

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<p style="text-align: right;">Page 278</p> <p>1 overturned by the university after you make 2 the findings of responsible or not 3 responsible? 4 A. I have not been. 5 Q. And so you submit it to the 6 university and is it your understanding that 7 it's then placed into a sanctioning stage and 8 that's handled by Mr. Bodak [sic] in Community 9 Standards? 10 A. You keep referring to him by 11 the wrong name. It's Bordak. 12 Q. Bordak. Thank you. It's 13 submitted to Mr. Bordak in Community 14 Standards? 15 A. I submit my package to 16 Mr. Bordak and Dr. Perry. 17 Q. Okay. And so if it's a finding 18 of responsible is it your understanding that 19 it's then placed into the sanctioning phase 20 and that's determined by the school, right? 21 A. I have never been reversed by 22 the university. I assume they could if they 23 thought I was wrong. 24 Q. I didn't ask that, ma'am. I am</p>	<p style="text-align: right;">Page 280</p> <p>1 but again I am not involved -- is they get to 2 see that appendix, which maybe is why that's 3 stapled to five here. 4 Q. Do you know when they are 5 permitted to come in and review that material? 6 A. I think there is a time frame 7 of a couple of days. 8 Q. Isn't that after being told of 9 what the findings were against them and what 10 sanctions are being imposed, then they have a 11 right? 12 A. I believe -- no, but I don't 13 know. 14 Q. Have you ever participated in 15 decision making or recommendation as to what 16 appropriate sanctions there should be? 17 A. No. I am never even told. 18 Q. Okay. You mentioned the appeal 19 process. The appeal process comes after your 20 findings -- your investigation and your 21 findings and conclusions concerning 22 responsible; is that correct? 23 A. Yes. 24 Q. It comes after the sanctioning</p>
<p style="text-align: right;">Page 279</p> <p>1 just asking the next step. What is your 2 understanding? 3 A. What I just said is important 4 to the next step. Yes, after I submit my 5 report I have never been overruled or 6 overturned or even questioned about anything. 7 If it is responsible, my understanding -- and 8 I am not involved in that process -- it goes 9 to the complainant and the respondent, there 10 is an appeal process, and sanctioning comes 11 after that. 12 Q. What goes to the complainant 13 and the respondent, the finding of responsible 14 or not responsible? 15 A. My understanding -- and, again, 16 I am not involved. My understanding is that 17 they are allowed to come into the office and 18 they get to read the short report. 19 Q. A short report would be what, 20 the report without your interview? 21 A. Yes. 22 Q. So the short report would be 23 Exhibit-5, I think? 24 A. Five. And my understanding --</p>	<p style="text-align: right;">Page 281</p> <p>1 phase by the university -- 2 A. I don't know the answer to 3 that. 4 Q. Do you know what rights of 5 appeal a student would have who is found to be 6 responsible? 7 A. I know that is set forth in the 8 policy. I don't know what they are off the 9 top of my head. 10 Q. Okay. Let me ask you this: 11 Based upon your review of Exhibit-11 and 12 Exhibit-12, that is the Dear Colleague Letter 13 of September 2017 and the Q&A, did you change 14 any of your procedures that you followed in 15 your investigation of sexual misconduct cases 16 on behalf of the university? 17 A. No. 18 Q. Did you have any discussions 19 with anybody at the university, counsel, 20 anybody in the departments or anything else 21 about the procedures to follow or what new 22 recommendations were being made? 23 A. No. 24 Q. You mentioned that you</p>

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<p style="text-align: right;">Page 282</p> <p>1 participated in a meeting with a whole bunch 2 of people. I take it that was -- I think you 3 said that was well before the September '17? 4 A. Oh, my gosh. It was before the 5 process changed for us to be investigators. 6 It was when it was moving from internal 7 investigations to outside. 8 Q. So that either at the end of 9 2014 or 2015 when it became effective, right? 10 A. Correct. I believe the meeting 11 was in the summer. So it was probably the 12 summer of 2014. 13 Q. As a result of that meeting was 14 any pamphlets, manuals, documents generated 15 for everybody to follow concerning appropriate 16 protocols or the handling of an investigation? 17 A. I don't know. And I've told 18 you this a couple of times, the dates on these 19 policies don't ring a bell to me. I don't 20 know whether the interim policy had been 21 released at that point or not, but it was 22 pretty close in time to that. But I am not 23 aware of any other documents other than the 24 policy. I guess I will say I know -- I think</p>	<p style="text-align: right;">Page 284</p> <p>1 physical? 2 A. There was one of the -- it was 3 a male complainant. He had some condition on 4 the autism spectrum. I think he asked if he 5 could take notes, if I could go slowly. It 6 was something like that -- it all worked out 7 perfectly fine -- if he could take breaks. It 8 was definitely a male complainant with an 9 autism spectrum disorder. 10 Q. A male complainant? 11 A. Male complainant. 12 Q. So this was a male complainant 13 who was given special accommodations? 14 A. I wouldn't call it 15 accommodations, but he told me about his 16 condition and said -- I think he said, "Could 17 I take notes so I am sure I am responding to 18 your question?" and, you know, like, "If I 19 need to ask you to slow down." It was that 20 kind of conversation. It was easy to 21 accommodate. Your question was has anyone 22 asked for accommodations and that was it. 23 Q. When you interview either a 24 complainant or respondent do you ever raise</p>
<p style="text-align: right;">Page 283</p> <p>1 the students get some shortcut on the policy 2 or something. There's something that the -- 3 sometimes the complainants have told me this. 4 The students get something, you know, in 5 addition to the long policy, like a pamphlet 6 or something like that. 7 Q. Do you have any idea what that 8 is? 9 A. A card maybe. I don't know. 10 It's something little. 11 Q. Okay. 12 A. Maybe it's a card, now that I 13 am focusing on it, a card for the various 14 persons they can report to or something like 15 that. 16 Q. Okay. Different people, like 17 Title IX coordinator, disabilities group, 18 anything like that? 19 A. I am not aware of any of that, 20 but I am not involved. 21 Q. Have you in your investigation 22 of these cases at St. Joe's had anybody ask 23 for special accommodations because of some 24 type of disability, whether medical or</p>	<p style="text-align: right;">Page 285</p> <p>1 with them, "Well, if you need special 2 accommodations" to let you know or anything? 3 A. No. 4 Q. It's only if, what, the 5 disabilities part of the school notifies you 6 that some type of accommodations are 7 necessary? 8 MR. MYERS: Object to the form 9 of the question. She just responded 10 to a situation which is contrary to 11 the factual premise of your question. 12 MR. SCHWABENLAND: I think 13 you're right. 14 BY MR. SCHWABENLAND: 15 Q. If a student raises that with 16 you, then you would try to accommodate them? 17 A. Yes. I have been an employment 18 lawyer for 32 years. I know the obligation of 19 all kinds of institutions to accommodate. If 20 I -- so I have never raised it with a student. 21 If they raised with me I would be sensitive 22 about that. If it was something that I 23 couldn't manage, you know, this one gentleman 24 was, you know, "Can I take notes?" And "If I</p>

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<p style="text-align: right;">Page 286</p> <p>1 ask you to slow down, can you slow down?" It 2 was very easy to manage. If it was something 3 that I couldn't manage, I need an interpreter, 4 you know, it could be something well above me, 5 I would refer it back to Community Standards. 6 I know the university does have an 7 accommodation office. 8 Q. You indicated that Ms. Roe may 9 have submitted her text to you after the 10 meeting? 11 A. I don't remember that. I mean, 12 you would have -- you know, I gave the 13 university all my emails. So if she didn't -- 14 I just don't have a recollection. I obviously 15 have them. I don't remember if she gave them 16 to me at the meeting or I asked her to send 17 them to me. 18 Q. But I didn't see anything in 19 the handwritten notes of your interview with 20 her you referencing those text messages. 21 A. Yes, there are. I am pretty 22 sure. It's on Page 384. 23 MR. MYERS: Exhibit-7. 24 THE WITNESS: I say, "Send me</p>	<p style="text-align: right;">Page 288</p> <p>1 that she was on the phone when he came back in 2 the room and quickly said that she had to 3 leave. I mean, that's what those text 4 messages went to. You know, "I call/texted my 5 friends with my safe word" or whatever it was 6 and "She called me and said she'd meet me 7 downstairs." So he didn't disagree with that. 8 Q. Okay. Was it relevant to you 9 to know what medications she was on? 10 A. No. 11 Q. Do you know anything about if 12 medication she was taking can cause bruises to 13 her individually at all? 14 A. It is possible. I did not do 15 that. 16 Q. Did you take the fact that she 17 had bruises just at face value, then? In 18 other words, don't you have to determine the 19 cause of that? 20 A. My overall reaction from 21 meeting her and talking to John was that what 22 happened was so prominent that she felt the 23 need to text her friend and get out of that 24 immediately. You know, that was my</p>
<p style="text-align: right;">Page 287</p> <p>1 text messages." 2 BY MR. SCHWABENLAND: 3 Q. Would that be indicative of the 4 fact that she later sent them to you? 5 A. Probably, yes. 6 Q. Did you then have any further 7 conversation with her about these text 8 messages? 9 A. I don't believe so. 10 Q. And you did not submit these 11 text messages to John Doe for comment? 12 A. Correct. 13 Q. In your investigation was it 14 relevant or of some importance to you to know 15 if Ms. Roe had a history of self-hurting or 16 hurting herself? 17 MS. ENGLE: Objection. 18 THE WITNESS: No. 19 BY MR. SCHWABENLAND: 20 Q. Did you review the texts that 21 she sent you to determine whether or not those 22 text messages made sense? 23 A. I think I reviewed them. John 24 Doe, though, did not disagree with the premise</p>	<p style="text-align: right;">Page 289</p> <p>1 overwhelming thought about what happened and 2 her need to leave. 3 Q. Would you agree that was based 4 in part upon her thinking of her old boyfriend 5 and the abuse he had shown her in the past? 6 MS. ENGLE: Objection. 7 THE WITNESS: No. 8 BY MR. SCHWABENLAND: 9 Q. Was one of the reasons for you 10 not to inquire of any past relationship with 11 her boyfriend that she says abused her and 12 choked her or squeezed her neck the fact that 13 you didn't want to traumatize her or cause her 14 any problems? 15 A. I don't think so. I've 16 certainly talked to lots of students about 17 very delicate matters. 18 Q. But you didn't talk to her 19 about any delicate matter involving her old 20 boyfriend? 21 A. Correct. 22 Q. And did you talk to her about 23 any matter involving whether or not she was 24 under discipline for any reason? She is now a</p>

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<p style="text-align: right;">Page 290</p> <p>1 freshman at the university.</p> <p>2 A. I did not.</p> <p>3 Q. Under the sexual misconduct</p> <p>4 policy are you aware that students get, I am</p> <p>5 going to use the word immunized or amnesty, if</p> <p>6 they -- for their own drug or alcohol intake</p> <p>7 if they are reporting sexual abuse?</p> <p>8 MR. MYERS: Object to the form</p> <p>9 of the question, but you can answer.</p> <p>10 THE WITNESS: I think the</p> <p>11 policy is much more nuanced than you</p> <p>12 just described.</p> <p>13 BY MR. SCHWABENLAND:</p> <p>14 Q. Tell me what your understanding</p> <p>15 is.</p> <p>16 A. But I am aware that the</p> <p>17 university does not want students to not make</p> <p>18 complaints because they are afraid they will</p> <p>19 get in trouble for some other policy</p> <p>20 violation, you know, like, the kid's dying on</p> <p>21 the couch because they don't want to call the</p> <p>22 police because the kid is inebriated. I am</p> <p>23 aware that there is some consideration given</p> <p>24 to that.</p>	<p style="text-align: right;">Page 292</p> <p>1 BY MR. SCHWABENLAND:</p> <p>2 Q. You asked Ms. Doe and Ms. Doe</p> <p>3 said that she was -- she felt he was trying to</p> <p>4 hurt her. Look at your interview with her,</p> <p>5 the last paragraph before you go to the</p> <p>6 interview with Doe. I will read it to you.</p> <p>7 A. Let me find it.</p> <p>8 Q. Okay.</p> <p>9 MR. MYERS: Ed, are you looking</p> <p>10 at five or six?</p> <p>11 THE WITNESS: I am looking at</p> <p>12 273 at the top of the page.</p> <p>13 BY MR. SCHWABENLAND:</p> <p>14 Q. Yes.</p> <p>15 A. I asked her why she thought he</p> <p>16 squeezed her neck. "She said she did not view</p> <p>17 it as pleasurable, she did not ask for it, and</p> <p>18 she did not consent to it. She thinks he did</p> <p>19 it to hurt her, because she felt he was</p> <p>20 choking her."</p> <p>21 Q. Okay. So my question to you</p> <p>22 is: Did you probe with her as to why she felt</p> <p>23 he was trying to hurt her?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 291</p> <p>1 Q. When Ms. Roe said "What the F,"</p> <p>2 did she say that -- does she definitely</p> <p>3 remember saying that or did she say words to</p> <p>4 the effect, "I think I may have said that," if</p> <p>5 you can recall?</p> <p>6 A. I think my notes record that.</p> <p>7 They don't. It just says "What the F." So I</p> <p>8 don't remember one way or the other.</p> <p>9 Q. Did you ask Ms. Roe why she</p> <p>10 thinks that Doe would suddenly want to hurt</p> <p>11 her, any conversation about that?</p> <p>12 MS. ENGLE: Objection.</p> <p>13 MR. MYERS: Object to the form</p> <p>14 of the question. It assumes that she</p> <p>15 said that or thought that, neither of</p> <p>16 which is in the record and both of</p> <p>17 which is contrary to both the written</p> <p>18 and oral statements that we have been</p> <p>19 going over for now six and a half</p> <p>20 hours.</p> <p>21 MR. SCHWABENLAND: Apparently</p> <p>22 two different records, because it is</p> <p>23 in the record. She said that.</p> <p>24</p>	<p style="text-align: right;">Page 293</p> <p>1 Q. Who in St. Joe's, if anyone, is</p> <p>2 responsible for oversight of your</p> <p>3 investigation?</p> <p>4 A. I don't know. Dr. Carey</p> <p>5 Anderson is the vice president of that</p> <p>6 department, so I assume he's ultimately</p> <p>7 responsible for everything that happens under</p> <p>8 that department, but I can't answer your</p> <p>9 specific question.</p> <p>10 Q. Has Dr. Carey Anderson or</p> <p>11 anybody else at St. Joe's said, "Well, we are</p> <p>12 going to review each summary and see if it's</p> <p>13 acceptable or get back to you on that"?</p> <p>14 A. No.</p> <p>15 Q. So, to your knowledge, does</p> <p>16 anybody oversee either how you do the</p> <p>17 investigation or the reports that you submit?</p> <p>18 A. I assume that they are read,</p> <p>19 but I do not personally know.</p> <p>20 Q. All right. Let me ask you</p> <p>21 this: Do you have a belief one way or another</p> <p>22 as to whether or not a victim should be</p> <p>23 believed?</p> <p>24 A. I do not.</p>

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<p style="text-align: right;">Page 294</p> <p>1 Q. So you would recognize that</p> <p>2 sometimes they may not be telling the truth;</p> <p>3 is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Other times they may be</p> <p>6 misinterpreting something that happened?</p> <p>7 A. That's possible.</p> <p>8 MR. SCHWABENLAND: Okay. I'm</p> <p>9 taking a two-minute break. This will</p> <p>10 be the last break and then I think I</p> <p>11 will be done shortly.</p> <p>12 -- --</p> <p>13 (Whereupon, a recess was held</p> <p>14 from 5:13 p.m. to 5:21 p.m.)</p> <p>15 -- --</p> <p>16 BY MR. SCHWABENLAND:</p> <p>17 Q. In your investigation of these</p> <p>18 cases -- by "these cases" I mean sexual</p> <p>19 misconduct cases -- on behalf of St. Joe's, do</p> <p>20 you customarily only talk to the complainant</p> <p>21 and the respondent or is it much more frequent</p> <p>22 that you also interview other witnesses? May</p> <p>23 not have witnessed the actual thing complained</p> <p>24 of, but at least they had contact with the</p>	<p style="text-align: right;">Page 296</p> <p>1 and the totality of the information that I</p> <p>2 have after interviewing the complainant and</p> <p>3 the respondent. It could be, but I can't</p> <p>4 answer it in a hypothetical way.</p> <p>5 Q. Well, let's get to this. In</p> <p>6 terms of this case, you didn't feel it</p> <p>7 necessary at all to seek to talk to any of her</p> <p>8 friends?</p> <p>9 A. I did not.</p> <p>10 Q. Did you ask Ms. Roe why she</p> <p>11 hadn't reported this right away to the school?</p> <p>12 MS. ENGLE: Objection to form.</p> <p>13 BY MR. SCHWABENLAND:</p> <p>14 Q. Do you know when this was</p> <p>15 reported to the school?</p> <p>16 A. February 26 and it happened on</p> <p>17 February 23.</p> <p>18 Q. Okay. And this was reported</p> <p>19 by -- I forgot her name.</p> <p>20 MR. MIRABELLA: Katie Bean.</p> <p>21 BY MR. SCHWABENLAND:</p> <p>22 Q. -- Ms. Bean, who works with the</p> <p>23 plaintiff, taking her into Ms. Perry's office?</p> <p>24 MS. ENGLE: Objection to form.</p>
<p style="text-align: right;">Page 295</p> <p>1 complainant and respondent.</p> <p>2 MS. ENGLE: Objection to form.</p> <p>3 THE WITNESS: It's such a</p> <p>4 general question I can't answer it.</p> <p>5 There are certainly investigations</p> <p>6 where I talk to more than the</p> <p>7 complainant and respondent.</p> <p>8 BY MR. SCHWABENLAND:</p> <p>9 Q. But you can't say on a more</p> <p>10 frequent basis which one you do?</p> <p>11 A. Depends on the allegations, so</p> <p>12 I cannot answer that off the top of my head.</p> <p>13 Q. Let's talk about this just</p> <p>14 briefly here. Once you got the text messages</p> <p>15 and knowing that Ms. Roe was on the phone</p> <p>16 while in St. Mary's to her friends, would it</p> <p>17 have been helpful to talk to them?</p> <p>18 A. I didn't believe so.</p> <p>19 Q. In terms of assessing</p> <p>20 credibility, is it helpful to know the actions</p> <p>21 of the complainant both during the time period</p> <p>22 that she's with the respondent and what she is</p> <p>23 telling her friends afterwards?</p> <p>24 A. It depends on the investigation</p>	<p style="text-align: right;">Page 297</p> <p>1 THE WITNESS: I don't know who</p> <p>2 that lady is at all.</p> <p>3 BY MR. SCHWABENLAND:</p> <p>4 Q. Did you know that the</p> <p>5 complainant worked in the school?</p> <p>6 A. That Ms. Roe worked at the</p> <p>7 school?</p> <p>8 Q. Yes.</p> <p>9 A. I did not know that.</p> <p>10 Q. So you didn't have any</p> <p>11 questions of Ms. Roe as to why she waited</p> <p>12 until the afternoon of February 26th to</p> <p>13 complain of this?</p> <p>14 A. I did not. It might be the</p> <p>15 difference between a Friday and a Monday, too.</p> <p>16 I don't know. I didn't pull out a calendar.</p> <p>17 MR. MYERS: It is.</p> <p>18 BY MR. SCHWABENLAND:</p> <p>19 Q. Get back to that Saturday.</p> <p>20 Ms. Roe has indicated that she and her friends</p> <p>21 drank liquor, a lot, and then went to a party.</p> <p>22 A. I don't know that.</p> <p>23 Q. And is that something that you</p> <p>24 would like to have known if that really</p>

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<p style="text-align: right;">Page 298</p> <p>1 happened?</p> <p>2 A. I can't answer that</p> <p>3 hypothetically.</p> <p>4 Q. In terms of assessing a</p> <p>5 person's credibility what factors do you</p> <p>6 consider?</p> <p>7 A. I considered, in this case,</p> <p>8 based on my interviews with them and the</p> <p>9 information that they gave me and their</p> <p>10 communication style and general instinct and</p> <p>11 experience.</p> <p>12 Q. Okay. You found both to be</p> <p>13 credible; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. So your instinct and experience</p> <p>16 in what?</p> <p>17 A. In being a human being for 59</p> <p>18 years and having a lot of -- can't discount</p> <p>19 that, right?</p> <p>20 Q. Okay.</p> <p>21 A. And having, you know, an</p> <p>22 employment law background, where I talk to</p> <p>23 employees and people about complaints all the</p> <p>24 time.</p>	<p style="text-align: right;">Page 300</p> <p>1 A. So they are not communicating</p> <p>2 information about -- substantive information.</p> <p>3 Q. Do you know when Ms. Roe took</p> <p>4 the photographs?</p> <p>5 A. Sunday, she said.</p> <p>6 Q. Do you know who took them?</p> <p>7 A. Her friend. I don't know the</p> <p>8 person's name.</p> <p>9 Q. Do you know who Ms. Roe first</p> <p>10 told about the event?</p> <p>11 A. No.</p> <p>12 MR. SCHWABENLAND: Off the</p> <p>13 record.</p> <p>14</p> <p>15 EXAMINATION</p> <p>16</p> <p>17 BY MS. ENGLE:</p> <p>18 Q. Good afternoon, Ms. Malloy. My</p> <p>19 name is Susan Engle. I represent the</p> <p>20 individual that's been identified for purposes</p> <p>21 of this litigation as Jane Roe. I just have a</p> <p>22 couple of follow-up questions.</p> <p>23 A. Sure.</p> <p>24 Q. You were asked about Ms. Roe</p>
<p style="text-align: right;">Page 299</p> <p>1 Q. Do you look for corroborating</p> <p>2 evidence?</p> <p>3 A. It depends. I can, yes.</p> <p>4 Q. Do you look for the claimant's</p> <p>5 actions shortly after the incident, say, that</p> <p>6 weekend, to see if she was really traumatized?</p> <p>7 MS. ENGLE: Object to form.</p> <p>8 THE WITNESS: In this case, no.</p> <p>9 It is a possibility in other cases. I</p> <p>10 told you based on the investigation.</p> <p>11 So that's both what the claimant and</p> <p>12 the respondent told me.</p> <p>13 BY MR. SCHWABENLAND:</p> <p>14 Q. When you looked at the text</p> <p>15 messages -- and I may have asked you this</p> <p>16 before so I apologize -- did you suspect</p> <p>17 anything was left out of those text messages?</p> <p>18 A. No. I mean, the thing about</p> <p>19 the text messages was, this was her way of</p> <p>20 getting the friend to call her.</p> <p>21 Q. To come meet her outside?</p> <p>22 A. Which happened. Yes. I think</p> <p>23 somebody called her first.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 301</p> <p>1 telling you something about her saying "What</p> <p>2 the fuck" when she was being choked by Mr. Doe</p> <p>3 and then you were asked some follow-up</p> <p>4 questions and you were directed to your</p> <p>5 handwritten notes. Do you recall that line of</p> <p>6 questioning?</p> <p>7 A. Yes.</p> <p>8 Q. And you were asked something</p> <p>9 along the lines of "Did she actually say that</p> <p>10 or she's not sure whether or not she said</p> <p>11 that?" You indicated your notes didn't say</p> <p>12 one way or the other?</p> <p>13 A. Correct.</p> <p>14 Q. Can I direct your attention to</p> <p>15 Exhibit-6. The Bates stamp page is SJU272,</p> <p>16 leaving out the zeros in the middle.</p> <p>17 A. Okay.</p> <p>18 Q. In the first full paragraph</p> <p>19 about two-thirds of the way down it starts as</p> <p>20 redacted. It says, Redacted, "believes she</p> <p>21 said 'What the fuck.' He pulled away." Do</p> <p>22 you see where I'm referring to?</p> <p>23 A. Yes.</p> <p>24 Q. The fact that you used the term</p>

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<p style="text-align: right;">Page 302</p> <p>1 "Believe she said," is that important to you 2 at all as far as that line of questioning 3 goes? 4 A. Yes. It would be my most 5 accurate testimony that she said believed. I 6 often write up the summaries of investigations 7 the day of or the night of the interviews. I 8 would not let too much time pass before doing 9 that. 10 Q. That was going to be my next 11 question, whether or not this page, SJU272, 12 was prepared fairly contemporaneous with the 13 interview you had with Ms. Roe? 14 A. I do the interviews on campus 15 and I live in the suburbs. I will say my 16 usual practice is I go to the Bala Cynwyd 17 public library across the street from St. 18 Joe's and I generally work fairly late into 19 the evenings. I actually hand write all parts 20 of the report. So it would be my typical 21 practice to write up the summaries of 22 investigation pretty shortly thereafter, if 23 not that evening, actually. 24 Q. When you indicate that Roe</p>	<p style="text-align: right;">Page 304</p> <p>1 determinations with respect to a complainant 2 do you take into consideration whether or not 3 you think that that individual is overreacting 4 to what happened? 5 A. Yes. 6 Q. And what bearing would that 7 have on your findings as far as credibility 8 goes? 9 A. It could possibly determine 10 that it didn't happen or it didn't happen in 11 the way it was explained. That's hard to 12 answer hypothetically. 13 Q. I understand. Well, in the 14 actual world, when you were interviewing Jane 15 Roe did you find her to be overreacting at any 16 point in time? 17 A. No. 18 Q. Does Ms. Roe's past 19 relationship history have any bearing on 20 whether or not what happened to her was 21 consensual? 22 A. No. 23 Q. The bruises on Ms. Roe's neck, 24 do they have any bearing on whether or not</p>
<p style="text-align: right;">Page 303</p> <p>1 believes that she said that comment, does that 2 indicate to you that Roe told you she may or 3 may not have said it, she wasn't certain? 4 A. Yes. I don't think I would 5 have said "believes" if I didn't have a reason 6 for that. 7 Q. Let me ask you this: Did Jane 8 Roe have to say "What the fuck" or something 9 along those terms in order for this squeezing 10 of the neck to be nonconsensual, as far as 11 your investigation purposes go? 12 A. No. 13 Q. Am I understanding that sexual 14 misconduct policy correctly in that it is the 15 job of the initiator of sexual contact to 16 obtain consent? 17 A. Correct. 18 Q. It's not the job of the 19 complainant to shut it down? 20 A. Correct. 21 Q. You were asked a little bit 22 about making credibility determinations, which 23 I understand is part of your investigative 24 process. When you're making credibility</p>	<p style="text-align: right;">Page 305</p> <p>1 this activity was consensual? 2 A. No. 3 MS. ENGLE: I don't have any 4 other questions. It was nice to meet 5 you. 6 THE WITNESS: Nice to meet you. 7 8 EXAMINATION 9 10 BY MR. SCHWABENLAND: 11 Q. What exactly did you do to 12 determine if Ms. Roe may have been 13 overreacting? 14 A. She did not present to me in 15 that way at all. She presented in a very calm 16 manner. I actually thought she was a pretty 17 tough cookie. And I have met lots and lots 18 and lots of students who I might not say that 19 about. She was very measured in her 20 description. And the calling, texting the 21 girlfriends to come get her, as I explained 22 before, did substantiate in my mind her fear 23 and hurt over this situation. Hurt meaning 24 pain.</p>

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<p style="text-align: right;">Page 306</p> <p>1 Q. But, again, wouldn't that be 2 another reason for you to probe into why she 3 froze all of a sudden or had a flashback about 4 her ex-boyfriend? 5 A. I do not believe so. 6 Q. And if I were to tell you that 7 Ms. Roe has said that she was raped multiple 8 times by her ex-boyfriend when she was a 9 teenager that would have no bearing on whether 10 or not she's overreacting? 11 MS. ENGLE: Object to form. 12 MR. MYERS: I object to the 13 form of the question and I object to 14 the continued use of the prior sexual 15 history of the victim here in your 16 defense, or prosecution, rather, of 17 this case. You can answer the 18 question. 19 THE WITNESS: I don't know. I 20 mean, that's hypothetical to me, so I 21 don't know. 22 BY MR. SCHWABENLAND: 23 Q. But it's hypothetical because 24 you didn't probe into that in this case here?</p>	<p style="text-align: right;">Page 308</p> <p>1 before me. 2 Q. Okay. But have you ever made a 3 finding that there wasn't a sexual assault in 4 a situation where there was interaction? 5 MR. MYERS: I object to the 6 form of the question. You can answer 7 the question. 8 THE WITNESS: I don't know and 9 that very well might turn on all of 10 the facts that would go to whether 11 there was consent or not. I don't -- 12 in that hypo that you have posed, I 13 don't remember having that situation. 14 -- -- 15 (Whereupon, Exhibit Malloy-13 16 was marked for purposes of 17 identification.) 18 -- -- 19 BY MR. SCHWABENLAND: 20 Q. I will represent to you what's 21 been marked as 13 is Ms. Roe's response to 22 Mr. Doe's appeal letter. 23 A. Okay. 24 Q. One of the things Mr. Doe</p>
<p style="text-align: right;">Page 307</p> <p>1 A. No. It's hypothetical as 2 you're describing it. But I did not probe 3 into that. I told you that multiple times. 4 Q. Do you recognize that there is 5 a difference between perhaps sexual assault 6 and one participant using a little bit too 7 much force or pressure during their getting 8 together? 9 MR. MYERS: I object to the 10 form of the question. You are stating 11 a principle of law which is absolutely 12 false. The thing that you have 13 described could easily be sexual 14 assault. The premise of the question 15 makes it a trap question and I am not 16 going to let her answer it. 17 MS. ENGLE: Join the objection. 18 BY MR. SCHWABENLAND: 19 Q. Do you ever evaluate in your 20 investigation whether or not there may have 21 been additional pressure used but certainly 22 not a sexual assault? 23 A. I can't answer that. I apply 24 the definitions in the policies to the facts</p>	<p style="text-align: right;">Page 309</p> <p>1 indicated in his appeal letter is that he had 2 no idea that she was uncomfortable in any way. 3 I'm paraphrasing? 4 A. I don't necessarily agree with 5 you, but, anyway. His appeal is five pages. 6 Q. Pardon me? 7 A. His appeal is five pages and 8 says a lot of stuff. 9 Q. I understand that. I am just 10 indicating that's one of the claims. 11 A. Okay. 12 Q. She states, "Even though some 13 memories of my ex-boyfriend did surface, 14 experiencing what Mr. Doe was doing was 15 petrifying to me. I was paralyzed from fear, 16 which led me to not say anything to him. 17 Instead I text my friends, because I knew that 18 would help me get out of the situation before 19 anything else happened." That's in that 20 fourth paragraph down. My question to you is 21 that, in the appeal letter she indicates that 22 she never alerted Mr. Doe that anything was 23 wrong -- 24 MR. MYERS: I object to the</p>

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<p style="text-align: right;">Page 310</p> <p>1 form.</p> <p>2 MS. ENGLE: Join.</p> <p>3 MR. MYERS: What is the</p> <p>4 question? Is the question whether</p> <p>5 what you just said true or is what the</p> <p>6 document says true?</p> <p>7 MR. SCHWABENLAND: Is what I</p> <p>8 just said true reflected in that</p> <p>9 document.</p> <p>10 MR. MYERS: I object to the</p> <p>11 form of the question. You are showing</p> <p>12 this witness, who was the</p> <p>13 investigator, a document created after</p> <p>14 her investigation, in which she was</p> <p>15 not involved. So the document says</p> <p>16 what the document says, Ed, really.</p> <p>17 MR. SCHWABENLAND: I know it</p> <p>18 says it. That's what I am saying.</p> <p>19 MR. MYERS: Well, then you</p> <p>20 don't need the witness to say that the</p> <p>21 document says what it says.</p> <p>22 BY MR. SCHWABENLAND:</p> <p>23 Q. Does she indicate in that</p> <p>24 document that she alerted Mr. Doe during that</p>	<p style="text-align: right;">Page 312</p> <p>1 indicates in that letter where the complainant</p> <p>2 says she alerted in some way the respondent</p> <p>3 that she didn't like something that was going</p> <p>4 on?</p> <p>5 MR. MYERS: Object to the form</p> <p>6 of the question. You are asking a</p> <p>7 witness not involved with the letter,</p> <p>8 which was created after her</p> <p>9 determination based on her interviews,</p> <p>10 to now evaluate whether the letter</p> <p>11 which indicates Roe pulling away,</p> <p>12 whatever your phrase was, indicates</p> <p>13 her displeasure with what was going</p> <p>14 on. I object to the form of the</p> <p>15 question. You have 16 minutes and I</p> <p>16 am walking out the door.</p> <p>17 MR. SCHWABENLAND: Well, you're</p> <p>18 using up my time.</p> <p>19 MR. MYERS: I am not using up</p> <p>20 your time.</p> <p>21 MR. SCHWABENLAND: Yes, sir,</p> <p>22 you are.</p> <p>23 MR. MYERS: Ask a question of a</p> <p>24 witness that has personal knowledge.</p>
<p style="text-align: right;">Page 311</p> <p>1 time together, that she said "What the fuck"?</p> <p>2 A. All I can tell you is, from</p> <p>3 reading my notes, she said that she was</p> <p>4 paralyzed, he had his hand around her throat,</p> <p>5 he was squeezing her neck, she couldn't</p> <p>6 breathe, she was scared, "What the fuck, what</p> <p>7 the F" I have written down, and he pulls away.</p> <p>8 I can't.</p> <p>9 Q. In that appeal letter is that</p> <p>10 reflected in there, saying the words "What the</p> <p>11 fuck"?</p> <p>12 MR. MYERS: I object to the</p> <p>13 form of the question. Is the question</p> <p>14 whether the phrase "What the fuck"</p> <p>15 appears in the appeal letter?</p> <p>16 MR. SCHWABENLAND: Yes.</p> <p>17 MR. MYERS: Okay. I stipulate</p> <p>18 that "What the fuck" does not appear</p> <p>19 in the appeal letter. This is not a</p> <p>20 fact witness on a letter that she's</p> <p>21 not part of, Ed. Now, come on. It's</p> <p>22 quarter of.</p> <p>23 BY MR. SCHWABENLAND:</p> <p>24 Q. Is there anything that</p>	<p style="text-align: right;">Page 313</p> <p>1 MR. SCHWABENLAND: Just object</p> <p>2 and let's go on.</p> <p>3 THE WITNESS: She is responding</p> <p>4 to a four- or five-page complaint, so</p> <p>5 I don't know what part of it she is</p> <p>6 responding to. But to try to answer</p> <p>7 your question, I agree with what</p> <p>8 Mr. Myers said, I --</p> <p>9 BY MR. SCHWABENLAND:</p> <p>10 Q. I am sure you do.</p> <p>11 A. -- I have no knowledge of</p> <p>12 anything after the time I had met with her.</p> <p>13 She said she texted her friends and John says</p> <p>14 that when he came back in she was on the phone</p> <p>15 with somebody.</p> <p>16 Q. And she says that she did not</p> <p>17 say anything to Doe, right?</p> <p>18 MS. ENGLE: Object to the form.</p> <p>19 MR. MYERS: Object to the form</p> <p>20 of the question. The letter says what</p> <p>21 the letter says. Are you asking</p> <p>22 her -- again, if you're asking her to</p> <p>23 read the document, which is in</p> <p>24 evidence and is going to be</p>

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<p style="text-align: right;">Page 314</p> <p>1 authenticated by other people, you are</p> <p>2 not asking a factual question. Go</p> <p>3 ahead. Answer the question if you</p> <p>4 can.</p> <p>5 THE WITNESS: It says, "Which</p> <p>6 led me to not say anything to him."</p> <p>7 BY MR. SCHWABENLAND:</p> <p>8 Q. Okay. What sources do you use</p> <p>9 as, quote, best practice for Title IX</p> <p>10 investigations?</p> <p>11 A. I don't refer to any documents</p> <p>12 that talk about best practices.</p> <p>13 Q. And why is that?</p> <p>14 A. I am not even aware that there</p> <p>15 is one.</p> <p>16 Q. What sources do you use for</p> <p>17 reference? Is that that NACUA?</p> <p>18 A. What do you mean by reference?</p> <p>19 Q. Well, you're an investigator.</p> <p>20 Do you have any literature or documentation as</p> <p>21 to how to carry out an investigation in a fair</p> <p>22 and impartial way?</p> <p>23 A. I am sure that I have read</p> <p>24 things over my career. I don't have something</p>	<p style="text-align: right;">Page 316</p> <p>1 CERTIFICATE</p> <p>2 ---</p> <p>3</p> <p>4</p> <p>5 I do hereby certify that I am a</p> <p>6 Notary Public in good standing, that</p> <p>7 the aforesaid testimony was taken</p> <p>8 before me, pursuant to notice, at the</p> <p>9 time and place indicated; that said</p> <p>10 deponent was by me duly sworn to tell</p> <p>11 the truth, the whole truth, and</p> <p>12 nothing but the truth; that the</p> <p>13 testimony of said deponent was</p> <p>14 correctly recorded in machine</p> <p>15 shorthand by me and thereafter</p> <p>16 transcribed under my supervision with</p> <p>17 computer-aided transcription; that the</p> <p>18 deposition is a true and correct</p> <p>19 record of the testimony given by the</p> <p>20 witness; and that I am neither of</p> <p>21 counsel nor kin to any party in said</p> <p>22 action, nor interested in the outcome</p> <p>23 thereof.</p> <p>24 WITNESS my hand and official</p> <p>seal this 26th day of July 2018.</p> <p><i>Kimberly A. Wornczyk</i></p> <p>Kimberly A. Wornczyk Notary Public</p>
<p style="text-align: right;">Page 315</p> <p>1 in my desk that I pull out.</p> <p>2 Q. Do you have any such literature</p> <p>3 in your office?</p> <p>4 A. Not that I can think of.</p> <p>5 Q. So, to your knowledge, do you</p> <p>6 have any pamphlet, booklet, anything else that</p> <p>7 talks about how to be fair and impartial as an</p> <p>8 investigator?</p> <p>9 A. No.</p> <p>10 Q. Do you have anything that talks</p> <p>11 about how to properly carry on an</p> <p>12 investigation of sexual misconduct?</p> <p>13 A. I have told you what we have</p> <p>14 talked about several times today. I have read</p> <p>15 materials and gone to seminars over the years.</p> <p>16 There's lots of people who can write something</p> <p>17 called "best practices," which is a lot of</p> <p>18 nothing either, but there is not a document</p> <p>19 that I refer to.</p> <p>20 MR. SCHWABENLAND: Okay. Thank</p> <p>21 you.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 (Deposition concluded. Time</p> <p>24 noted, 5:46 p.m.)</p>	<p style="text-align: right;">Page 317</p> <p>1 ---</p> <p>2 INSTRUCTIONS TO WITNESS</p> <p>3 ---</p> <p>4</p> <p>5 Please read your deposition over</p> <p>6 carefully and make any necessary corrections.</p> <p>7 You should state the reason in the appropriate</p> <p>8 space on the errata sheet for any corrections</p> <p>9 that are made.</p> <p>10 After doing so, please sign the</p> <p>11 errata sheet and date it.</p> <p>12 You are signing same subject to the</p> <p>13 changes you have noted on the errata sheet,</p> <p>14 which will be attached to your deposition.</p> <p>15 It is imperative that you return the</p> <p>16 original errata sheet to the deposing attorney</p> <p>17 within thirty (30) days of receipt of the</p> <p>18 deposition transcript by you. If you fail to</p> <p>19 do so, the deposition transcript may be deemed</p> <p>20 to be accurate and may be used in court.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>